

ARKANSAS CODE OF 1987 ANNOTATED

OFFICIAL EDITION



VOLUME 1 • TITLES 1-3



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ARKANSAS CODE OF 1987 ANNOTATED



VOLUME 1

2008 Replacement

TITLE 1: GENERAL PROVISIONS

TITLE 2: AGRICULTURE

TITLE 3: ALCOHOLIC BEVERAGES

Prepared by the Editorial Staff of the Publisher

Under the Direction and Supervision of the
ARKANSAS CODE REVISION COMMISSION

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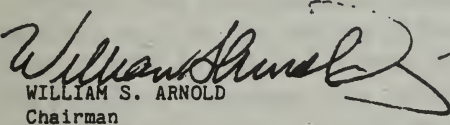
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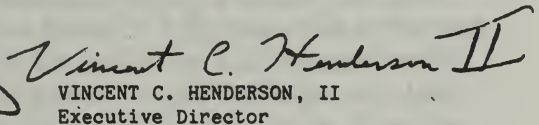
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Certification
of the
Arkansas Code Revision Commission

The Arkansas Code Revision Commission certifies pursuant to Acts 1987, No. 267, § 6(b), that this edition of the Arkansas Code of 1987 Annotated contains all the statute laws of the State of Arkansas of a general and permanent nature currently in force, that each section printed in this edition has been compared with each section of the manuscript submitted to the General Assembly and enacted into law by Acts 1987, No. 267, and that, with the exception of the corrections authorized by Acts 1987, No. 267, the sections are correctly reproduced in this edition.

For the Commission:


WILLIAM S. ARNOLD
Chairman


VINCENT C. HENDERSON, II
Executive Director

Little Rock, Arkansas
October 12, 1987

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IN MEMORY OF
WILLIAM S. ARNOLD

1921-1995

Whose lifetime of service to his family, community, and state exemplified all that is honorable in an honorable profession. Among his many services to his state and the legal profession, Mr. Arnold was the chairman of the Arkansas Code Revision Commission from 1983 until his death in 1995. Under his leadership, the commission created and the Arkansas General Assembly adopted the first statutory code in the history of the State of Arkansas, the Arkansas Code of 1987 Annotated. Through his initiative and determination, the people of Arkansas now have access to and confidence in their laws and will enter the next century better prepared to face the challenges that lie ahead.

Preface

The Arkansas Code of 1987 Annotated was enacted into law, effective at midnight, December 31, 1987, by Act 267 of 1987. It is the first recodification, revision, modernization, and reenactment of the State's general and permanent laws ever completed in Arkansas.

Act 267 of 1987 is printed in this volume, beginning on page xix. Code provisions relating to the Code's status and construction are compiled in Title 1, Chapter 2, which also appears in this volume.

Many of the Code's research aids, as well as its organization and other features, are described in the User's Guide, beginning on page xi of this volume. In addition, the General Index contains a Foreword that explains our indexing principles and suggests guidelines for successful index research. Time spent in reading the User's Guide and the Foreword to the Index will be repaid by research time saved once you become familiar with the Code.

Sources for statutes and annotations included in this volume are listed on the following page. Material received after the cutoff points shown in that list will be treated in future Code publications.

A complete list of Code titles appears on page x.

Suggestions, comments, or questions about the Code are welcome. You may call our toll-free number, 1-800-833-9844, fax us toll-free at 1-800-643-1280, or write: Arkansas Code Editor, LexisNexis, P.O. Box 7587, Charlottesville, Virginia, 22906-7587.

LexisNexis

Sources

This volume contains legislation enacted by the Arkansas General Assembly through the 2007 Regular Session. Annotations are to the following sources:

Arkansas Supreme Court and Arkansas Court of Appeals Opinions through 2007 Ark. LEXIS 287 (June 28, 2007) and 2007 Ark. App. LEXIS 324 (June 27, 2007).

Federal Supplement through August 13, 2007.

Federal Reporter 3d Series through August 13, 2007.

United States Supreme Court Reports, through August 13, 2007.

Bankruptcy Reporter through August 13, 2007.

Arkansas Law Notes through the 2006 Edition.

Arkansas Law Review through Volume 59, p. 511.

University of Arkansas at Little Rock Law Review through Volume 28, p. 399.

ALR 6th through Volume 17, p. 757.

Titles of the Arkansas Code

- | | |
|---|---|
| 1. General Provisions | 15. Natural Resources and Economic Development |
| 2. Agriculture | 16. Practice, Procedure, and Courts |
| 3. Alcoholic Beverages | 17. Professions, Occupations, and Businesses |
| 4. Business and Commercial Law | 18. Property |
| 5. Criminal Offenses | 19. Public Finance |
| 6. Education | 20. Public Health and Welfare |
| 7. Elections | 21. Public Officers and Employees |
| 8. Environmental Law | 22. Public Property |
| 9. Family Law | 23. Public Utilities and Regulated Industries |
| 10. General Assembly | 24. Retirement and Pensions |
| 11. Labor and Industrial Relations | 25. State Government |
| 12. Law Enforcement, Emergency Management, and Military Affairs | 26. Taxation |
| 13. Libraries, Archives, and Cultural Resources | 27. Transportation |
| 14. Local Government | 28. Wills, Estates, and Fiduciary Relationships |

User's Guide

This guide is designed to help both the lawyer and the layperson get the most out of the Arkansas Code of 1987 Annotated. It gives brief information on how to use each of the following features most effectively:

- Analyses
- Case Notes
- Code Status
- Court Rules
- Cross References
- Effective Dates
- History Notes
- Indexes
- Organization and Numbering
- Placement of Notes
- Preambles and Legislative Intent
- Publisher's Notes and A.C.R.C. Notes
- Research References
- Statute Headings
- Tables
- "This Act" References
- U.S. Code Notes

If you have questions that are not addressed by the User's Guide, please call our toll-free number, 1-800-833-9844, fax us toll-free at 1-800-643-1280 or write: Arkansas Code Editor, LexisNexis, P.O. Box 7587, Charlottesville, Virginia 22906-7587.

Analyses

Each title, chapter, and subchapter of the Code is preceded by an analysis. The analysis details the scope of the title, chapter, or subchapter and enables you to see at a glance the content of the title, chapter, or subchapter without resorting to a page-by-page examination of the text.

Case Notes

Every reported case from the Supreme Court of Arkansas, the Arkansas Court of Appeals, the federal district courts for Arkansas, the federal Eighth Circuit Court of Appeals, and the United States Supreme Court has been checked for constructions of Arkansas law. These constructions are noted under the pertinent Code section, court rule, or Arkansas Constitution provision. Where a decision has been reviewed by a higher court, the subsequent judicial history and

disposition is noted in the case note if such disposition has any bearing on the annotated material. Where two or more decisions state the same rule of law, the case citations are cumulated under one case note.

Case notes are grouped together under headings called “catchlines.” The catchlines identify the basic subject matter of the case notes and assist you in locating pertinent notes. Catchlines are arranged so that key topics — “Constitutionality,” “In General,” “Construction,” “Purpose,” and “Applicability” — come first, with other topics arranged alphabetically. Where there are two or more catchlines, an “analysis” listing all the catchlines precedes the annotations.

Frequently, statutes carry notes to cases that arose under earlier laws on the same subject. Case notes are retained so long as the editor believes the note will have some relevance under current law, though of course, the relevance may be diminished by later changes in the law. You should note the date of the case and see if it arose before the most recent version of the statute was enacted. Where the editor believes that there has been a significant change in the law’s form or context, cautionary language such as “(decision prior to 1985 amendment)” may appear in the citation.

Court decisions which cite or apply a statute without explanatory comment or construction are carried under the “Cited” heading. “Cited” notes follow all other case notes. These decisions may construe statutes related to the “cited” statute and may, therefore, be helpful in giving you an overview of the law.

Code Status

The Arkansas Code of 1987 Annotated was enacted by Act 267 of the 76th General Assembly. It was signed by the Governor on March 17, 1987, and contained a provision making it effective at midnight, December 31, 1987. The Code constitutes the official statute law of Arkansas.

The text of Act 267 is printed in this volume, beginning on page xix. In addition, Title 1, Chapter 2 of the Code contains statutes governing the status and construction of the Code.

Court Rules

A softcover, annually replaced Court Rules volume is part of the Code. The volume is supplemented in the Arkansas Code Service. It contains statewide rules of procedure of the state courts, and local rules of the United States district courts for Arkansas and of the United States Court of Appeals for the Eighth Circuit. Rules are received from the courts and are edited only for stylistic consistency. For further information, see the Preface to the Court Rules volume.

Throughout the Code, abbreviations for state court rules follow this pattern: Rules of the Supreme Court and Court of Appeals (S. Ct. & Ct. App. Rule), Rules for Circuit and Chancery Courts (Cir. & Ch. Cts. Rule), Rules of Criminal Procedure (ARCrP), Rules of Civil Procedure (ARCP), the former Rules of Appellate Procedure (ARAP), Rules of Appellate Procedure — Civil (RAPCiv and Ark. R. App. P. Civ.), Rules of Appellate Procedure — Criminal (RAPCrim and Ark. R. App. P. Crim.), District Court Rules (ADCR) (formerly Inferior Court Rules (AICR)), Rules Governing Admission to the Bar (Bar Adm. Rule), Rules of the Court Regulating Professional Conduct of Attorneys at Law (Prof. Cond. Rule), Arkansas Rules of Professional Conduct (ARProf) (formerly Model Rules of Professional Conduct (Model Prof. Cond. Rule)), Rules of Court Creating a Committee on the Unauthorized Practice of Law (Unauth. Prac. Rule), Code of Judicial Conduct (A. R. Jud. Cond.), Rules of Procedure of the Arkansas Judicial Discipline and Disability Commission (ARJDDC), Procedural Rules for the Arkansas Judicial Ethics Advisory Committee (AJEAC), Rules Providing for Certification of Court Reporters (Ct. Reporters Rule), and Rule of Evidence (Evid. Rule and A.R.E.).

Cross References

Cross references refer you to other statutes which may affect a law or place it in context. Cross references do not cite all related statutes, however, since these can be identified by using the General Index.

Effective Dates

Absent an emergency clause, Arkansas acts become effective 90 days after adjournment of the session at which they were enacted, pursuant to Arkansas Supreme Court interpretations of Amendment No. 7 to the Arkansas Constitution (see *Arkansas Tax Comm'n v. Moore*, 103 Ark. 48, 145 S.W. 199 (1912); *Cunningham v. Walker*, 198 Ark. 928, 132 S.W.2d 24 (1939); and related cases).

Acts that specify some other effective date carry “Effective Dates” notes. These notes cite the section of the act that sets the effective date and give the date itself. Usually, but not always, when the General Assembly sets an effective date that falls before the 90th day after adjournment, they also provide an emergency clause explaining the necessity of the earlier date. These emergency clauses are quoted in the “Effective Dates” note. Where an earlier date is given by the General Assembly, but without an emergency clause, the date given by the General Assembly may be invalid under the cases cited above, in which case the 90-day rule would apply.

History Notes

Each section of the Code is followed by a brief note showing its sources. Original and amendatory acts are listed, along with the

section's designation (if any) in the Arkansas Statutes Annotated (A.S.A. 1947) and in the earlier Pope's Digest (Pope's Dig.) and Crawford and Moses Digest (C. & M. Dig.). Once the history note has identified for you the statute or statutes that stand behind your Code section, you can use the Acts Disposition Table (see "Tables," below) to find where other provisions of that statute are codified.

In the Court Rules volume, separate history notes are not used. Instead, the date of promulgation for each set of rules generally is noted under the first rule in the set, and later changes or additions to the set are noted in brackets following individual rules that were changed or added.

Indexes

The Arkansas Code of 1987 Annotated is completely indexed in three General Index volumes, which are published in soft covers to allow for biennial updating and replacement. An explanatory Foreword to the Index appears in the first General Index volume.

Volumes containing Titles 1 through 28 have their own, individual indexes. In these volumes, there is a title index printed at the end of the volume in which the last section of the title appears. In the case of titles that are contained in more than one volume, a title index covering the entire title appears in the last volume of the title, while other volumes of the title carry volume indexes covering just the contents of that volume.

The Constitutions volume carries separate indexes for the federal and state constitutions, and the Court Rules volume contains a separate index for each set of rules.

Organization and Numbering

Statute volumes of the Code are organized by title, subtitle, chapter, subchapter, and section. Subtitles appear only in the larger titles. A table of Code titles appears in the preliminary pages of each statute volume. Arrangement of material within each title is summarized by title, chapter, and subchapter analyses, carried at the beginning of each of those units (see Analyses above).

The title, chapter, subchapter, and section of each Code section is revealed by its section number. Thus, in the designation "§ 1-2-102," the first digit ("1") means the provision is in Title 1 ("General Provisions"); the second digit ("2") indicates Chapter 2 ("The Code and Regulations"); the third digit ("1") stands for Subchapter 1 ("General Provisions") and the final two digits ("02") means the second section of that subchapter ("Enactment of Code").

Subtitles are not reflected by section number designations.

Within sections, subsections and subdivisions usually are designated following this pattern: (a)(1)(A)(i). Where the section does not begin with a subsection the pattern of the subdivisions are: (1)(A)(i). A distinctive indentation scheme is applied to suggest the relative value of each unit within this hierarchy. Uniform and model laws are codified in the form in which they were enacted and therefore may not follow this pattern.

Placement of Notes

Where a note pertains to a single Code section, it is usually set out following that section. In many instances, however, a note applies equally to several Code sections or to an entire subchapter, chapter, or title. If the pertinent sections are scattered, or few in number, the note will be duplicated for each section. But where the note applies to all or most of the sections in a subchapter, chapter, or title, we prevent the space-consuming repetition of notes by placing the note at the very beginning of the subchapter, chapter, or title.

For ease of reference and to save space, all “Effective Dates” and “Preambles” notes for statutes are carried at the beginning of the chapters or subchapters in which the statute is codified.

Look for these “unit-wide” notes between the subchapter, chapter, or title analysis and the first section in that unit.

Preambles and Legislative Intent

Depending on the instructions given by the Arkansas Code Revision Commission staff, legislative intent sections from some acts are either codified or carried as notes under sections affected by the act. Preambles are carried as notes at the beginning of chapters or subchapters in which the act is codified.

Publisher's Notes and A.C.R.C. Notes

Important or unusual features of a law that are not apparent from its text, or special circumstances surrounding passage of the law, are the sort of things likely to be found only in a publisher's note or A.C.R.C. note.

Generally speaking, the heading “Publisher's Notes” indicates that the note was written by a LexisNexis editor, either at the Commission's request or on LexisNexis's own initiative. The “A.C.R.C. Notes” heading is reserved for notes that were written by Commission staff members or that depend heavily on information furnished by the Commission.

Research References

Citations to articles in major national law encyclopedias and Arkansas law journals are given under this heading, wherever the article appears to discuss the statute under which the citation appears, or a topic related to the statute. These citations are intended only to give you a starting point for your library research. They are drawn from the following sources: American Jurisprudence, Second Edition; American Law Reports, Sixth Series; Corpus Juris Secundum; Arkansas Law Notes; Arkansas Law Review; University of Arkansas at Little Rock Law Journal; and University of Arkansas at Little Rock Law Review.

Statute Headings

The headings or “catchlines” used for titles, chapters, sections, and other units of the Code were prepared jointly by the Commission staff and by LexisNexis editors. Pursuant to § 1-2-115, these headings are not to be construed as part of the law and in no manner limit or expand the construction of any section.

Headings have been written with brevity and accuracy as the goals. The ideal heading will tell you, in one glimpse, whether or not you need to read the whole statute. It does this by containing only so much information as is needed to distinguish one statute from others you might consult. It needs to be read with the whole Code hierarchy in mind. Thus, the heading to § 1-2-303, “Powers and duties,” makes sense only as a subheading of Title 1, Chapter 2, Subchapter 3, “Arkansas Code Revision Commission.” the heading is not “Powers and duties of Arkansas Code Revision Commission,” as most of that heading would be redundant. Nor does the heading enumerate the powers and duties of the Commission, as such a “digest treatment” would add greatly to the size of the Code and would hamper you in making a “one-glimpse” determination that this section, and not some other, is what you need to read.

Tables

The Code contains several tables that can assist you in your research. Most are published in the two Tables volumes of your set. They are discussed under separate headings below.

Code Titles: A complete list of the Code’s 28 titles appears near the beginning of each statute text volume.

Acts Disposition Tables: The Tables volumes carry tables showing the Code location, if any, of every act ever passed in Arkansas. These tables are arranged chronologically. Where an act or portion of an act is not

codified in the Arkansas Code of 1987 Annotated, the table will carry a word or phrase giving the reason for (or at least noting) its omission.

You may find it helpful to use the acts disposition tables in conjunction with the history notes printed after each Code section. See History Notes, above.

Parallel Reference Tables: The Tables volumes also carry tables showing the Code location, if any, of sections from obsolete statutory compilations. Compilations covered by these tables are: the Civil and Criminal Codes of 1869, Crawford and Moses' Digest, Pope's Digest, and the Arkansas Statutes Annotated of 1947.

“This Act” References

Often you will note that a single General Assembly act has been codified as a single Code section, subchapter, or chapter. A routine part of the codification of that law was the translation of phrases like “... as used in this act ...” to read “... as used in this section (subchapter, chapter, etc.)” However, such straightforward translations of “this act” references were not always possible. For example, a single act might be codified in half a dozen chapters, such that a translation (“... as used in title 1, chapter 2; title 3, chapter 4; title 5, chapter 6; title 7, chapter 8; and title 9, chapter 10 ...”) would be cumbersome, confusing, or both. Or one act might be combined with several others to make a single section, so that a translation of “this act” would be to subsections or subdivisions. Wherever the translation of “this act” references posed problems of clarity or good style, the “this act” language was left untouched in the codified statute text, but an explanatory note (“Meaning of ‘this act.’”) was added following each section in which the reference appears. The note lists all the Code locations where “this act” now appears.

U.S. Code Notes

Frequently, the General Assembly enacts legislation that refers to a federal law only by its popular name or by its session law designation. To assist you in locating such laws, we have inserted U.S. Code notes that give you at least a general indication as to where the federal law is codified in the United States Code.

Act 267 of 1987

AN ACT TO ADOPT THE ARKANSAS CODE OF 1987 AS THE STATUTE LAW OF THE STATE OF ARKANSAS; AND FOR OTHER PURPOSES.

WHEREAS, Act 50 of 1945 created the Arkansas Statute Revision Commission and authorized and empowered it to revise, digest, and publish the general statutes of Arkansas; and

WHEREAS, The Arkansas Statute Revision Commission, pursuant to such authority, by contract with the Bobbs-Merrill Publishing Company of Indianapolis, Indiana, published the Arkansas Statutes of 1947, Annotated, which have been in use for forty years, twenty-four years longer than any previous digest of Arkansas statutes; and

WHEREAS, Act 641 of 1983 authorizes and empowers the Arkansas Statute Revision Commission to revise, codify, and publish a code of all the statute law of the State of Arkansas of a general and permanent nature, but without changing the substance or meaning of any provision of the statutes and after approval and adoption by the Arkansas General Assembly; and

WHEREAS, pursuant to such authority, the Arkansas Statute Revision Commission, for the State of Arkansas, entered into a contract dated August 1, 1984, with the Michie Company of Charlottesville, Virginia, for a codification of all the statutes of the State of Arkansas of a general and permanent nature; and

WHEREAS, in accordance with and pursuant to the provisions of that contract, a manuscript known as the Arkansas Code of 1987, Legislative Edition, was prepared by the Michie Company under the direction and supervision of the Arkansas Statute Revision Commission for submission to the Arkansas General Assembly for its approval and adoption;

NOW, THEREFORE,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. The Arkansas Code of 1987, Legislative Edition, consisting of 28 titles in 29 printed volumes, constituting the manuscript known as the Arkansas Code of 1987, Legislative Edition, and each subtitle, chapter, subchapter, and section thereof, prepared by

the Michie Company under the direction and supervision of the Arkansas Statute Revision Commission in accordance with and pursuant to the provisions of a contract dated August 1, 1984, by and between the Michie Company and the State of Arkansas, acting by and through the Arkansas Statute Revision Commission, entered into under authority of Act 50 of 1945, as amended, providing for the revision, digesting, and codification of all of the statutes of the State of Arkansas of a general and permanent nature, and in 29 printed volumes as noted above, is attached to, incorporated in, and expressly made a part of this Act and is enacted as law effective midnight, December 31, 1987.

SECTION 2. This Act shall be effective on and after midnight, December 31, 1987.

SECTION 3. (a) The enactment and adoption by section 1 of this act of the Arkansas Code of 1987, Legislative Edition, shall not affect or repeal the acts passed at the 76th regular session of the General Assembly, which shall become law prior to the date of the taking effect of the Arkansas Code of 1987. All such acts shall have full effect, and, so far as those acts vary from or conflict with any provision contained in the Arkansas Code of 1987, they shall have the effect of subsequent acts and as amending, repealing, or adding to the Arkansas Code of 1987. For purposes of incorporation into the Arkansas Code of 1987, all references in the general laws passed at the 76th regular session of the General Assembly to the Acts of Arkansas, the Arkansas Statutes of 1947, or to any other previously existing law shall be deemed to refer to the applicable or corresponding provisions contained in the Arkansas Code of 1987.

(b) All general laws enacted during the 76th regular session of the Arkansas General Assembly shall be incorporated in the proper and appropriate place in the Arkansas Code of 1987 and shall be arranged, classified, numbered, edited, and compiled for publication as part of the Code. Nothing in this authorization shall be construed as suspending the time such legislation takes effect. Such legislation shall become effective as if the inclusion were not authorized.

SECTION 4. (a) The inclusion in the Arkansas Code of 1987 of statutory provisions relating to process, practice, procedure, and appeals that have been superseded by rules of court shall not constitute a reenactment of such procedural provisions, and such procedural provisions shall continue to have only such force and effect as they had prior to the enactment of the Arkansas Code of 1987.

(b) All acts, codes, and statutes, and all parts of them and all amendments to them of a general and permanent nature in effect on December 31, 1987, are repealed unless:

(1) Expressly continued by specific provision of the Arkansas Code of 1987;

(2) Omitted improperly or erroneously as a consequence of compilation, revision, or both, of the laws enacted prior to the Code, including without limitation any omissions that may have occurred during the compilation revision, or both, of the laws comprising the Code; or

(3) Omitted, changed, or modified by the Arkansas Statute Revision Commission, or its predecessors, in a manner not authorized by the laws or the constitutions of Arkansas in effect at the time of the omission, change, or modification.

(c) In the event one of the exceptions in subsection (b) should be applicable, the law as it existed on December 31, 1987, shall continue to be valid, effective, and controlling.

SECTION 5. The Arkansas Code of 1987, Legislative Edition, shall not be printed or included in the Acts of Arkansas as provided in Act 6 of 1874, as amended, Arkansas Statutes § 14-404, Arkansas Code § 25-18-205.

SECTION 6. (a) Before the publication of the Arkansas Code of 1987 in bound form, the Arkansas Statute Revision Commission shall correct typographical and grammatical errors, erroneous references to sections, subsections, and subdivisions, and other mistakes obviously made through oversight or accident and shall also make any other purely formal or clerical changes in keeping with the purpose of the revision.

(b) The commission shall examine the Arkansas Code of 1987 as printed, and, if it finds that each section of the manuscript submitted to the General Assembly and enacted into law by this act is correctly reproduced therein with the exception of the corrections authorized by this act, it shall furnish the printer a certificate to that effect. The certificate shall be reproduced at the beginning of volume 1 of each printed set.

SECTION 7. "NOTE: 'Section 7 of the Act consists of 187 pages of technical corrections to the Legislative Edition of the Arkansas Code of 1987. Section 7 of Act 267 of 1987, constituting technical corrections to the text of the Legislative Edition, is not published here because the Legislative Edition of the Arkansas Code of 1987 is not published in the Acts of Arkansas, pursuant to Section 5 of Act 267 of 1987. These corrections made by Section 7 are incorporated in the Arkansas Code of 1987 Annotated, published by the Michie Company pursuant to a contract with the Arkansas Code Revision Commission.' — **W. J. 'BILL' McCUEN, SECRETARY OF STATE.**"

TITLE 1

GENERAL PROVISIONS

CHAPTER.

1. GENERAL PROVISIONS.
2. THE CODE AND REGULATIONS.
3. PUBLICATION OF LAWS, REPORTS, ETC.
4. STATE SYMBOLS, MOTTO, ETC.
5. HOLIDAYS AND OBSERVANCES.

CHAPTER 1

GENERAL PROVISIONS

SECTION.

1-1-101. Extension of western boundary line.

Effective Dates. Acts 1905, No. 41,
§ 2: effective on assent by United States.

1-1-101. Extension of western boundary line.

The western boundary line of the State of Arkansas is extended as follows, so as to include all that strip of land in the Indian Territory lying and being situated between the Arkansas state line adjacent to the city of Fort Smith, and the Arkansas River and Poteau River, described as follows, namely: Beginning at a point on the south bank of the Arkansas River one hundred (100) paces west of Old Fort Smith, where the western boundary line of the State of Arkansas crosses the Arkansas River, and running southwesterly along the south bank of the Arkansas River to the mouth of the Poteau; thence at right angles with the Poteau River to the center of the current of that river; thence southerly up the middle of the current of the Poteau River, except where the Arkansas state line intersects the Poteau River, to a point in the middle of the current of the Poteau River opposite the mouth of Mill Creek, and where it is intersected by the middle of the current of Mill Creek; thence up the middle of Mill Creek to the Arkansas state line; thence northerly along the Arkansas state line to the point of beginning.

History. Acts 1905, No. 41, § 1, p. 124;
C. & M. Dig., § 9180; Pope's Dig.,
§ 11865; A.S.A. 1947, § 5-101.

Cross References. Boundaries established, Ark. Const., Art. 1.

CASE NOTES

ANALYSIS

Constitutionality.
Choctaw Strip.

Constitutionality.

The constitutionality of acts of the legislature or of Congress fixing or attempting to fix the boundary lines of the state will not be determined upon an agreed statement of facts however sincerely or honestly made. *Ex parte Thompson*, 86 Ark. 69, 109 S.W. 1171 (1908).

Choctaw Strip.

The legislature having accepted a grant from Congress of the territory adjacent to Fort Smith known as the "Choctaw Strip,"

the courts will not inquire whether the legislature had the authority to do so but will treat such territory as part of the state. *State v. Bowman*, 89 Ark. 428, 116 S.W. 896 (1909).

Where the act of Congress ceding the territory called the "Choctaw Strip" adjoining the city of Fort Smith to the state and the acts accepting such grant described the land ceded by permanent lines so that its location could be understood, a mistake in the particular description of the strip was merely a clerical error and would be disregarded. *Bowman v. State*, 93 Ark. 168, 129 S.W. 80 (1909).

Cited: *City of Fort Smith v. Mikel*, 232 Ark. 143, 335 S.W.2d 307 (1960).

CHAPTER 2

THE CODE AND REGULATIONS

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. CONSTRUCTION.
3. ARKANSAS CODE REVISION COMMISSION.
4. COMMISSION ON UNIFORM STATE LAWS.
5. UNIFORM DEFINITION OF MINORITIES IN THE STATE OF ARKANSAS.

RESEARCH REFERENCES

Ark. L. Notes. Mullane, *Statutory Interpretation in Arkansas: How Should a Statute Be Read? When is it Subject to Interpretation? What Our Courts Say and What They Do*, 2004 Arkansas L. Notes 85.

Mullane, *Statutory Interpretation in Arkansas: How Arkansas Courts Interpret Statutes. A Rational Approach*, 2005 Arkansas L. Notes 73.

U. Ark. Little Rock L.J. Henderson, *The Creation of the Arkansas Code of 1987 Annotated*, 11 U. Ark. Little Rock L.J. 21.

Mullins, *An Academic Perspective on Codification and the Arkansas Code of 1987 Annotated*, 11 U. Ark. Little Rock L.J. 285.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 1-2-101. Legislative intent of Code.
- 1-2-102. Enactment of Code.
- 1-2-103. Repeal of prior laws by Code — Exceptions.
- 1-2-104. Omission of validating and curative acts from Code.
- 1-2-105. Adoption of Code not to affect certain acts.

SECTION.

- 1-2-106. Adoption of Code not to validate constitutionally invalid acts.
- 1-2-107. Repealed acts not revived by Code.
- 1-2-108. Adoption of Code not to affect rules and regulations.
- 1-2-109. Adoption of Code not to validate

SECTION.

- invalid, unauthorized, or defective rules and regulations.
- 1-2-110. Adoption of Code not to affect terms of office, compensation, expenses, etc.
- 1-2-111. Adoption of Code not to affect existing rights, liabilities, contracts, actions, etc.
- 1-2-112. Adoption of Code not to toll limitations.
- 1-2-113. Designation and citation of Code.
- 1-2-114. References to Code titles, subtitles, chapters, etc.
- 1-2-115. Code classification and organization not to be construed — Notes, headings, etc., not part of law.

SECTION.

- 1-2-116. Amendments to Code.
- 1-2-117. Severability of provisions of Code.
- 1-2-118. Effective date of Code.
- 1-2-119. Common and statute law of England adopted.
- 1-2-120. Effect of repeal of statute.
- 1-2-121. Bills and laws to be clear and unambiguous.
- 1-2-122. Laws requiring use of registered mail — Alternative use of certified mail.
- 1-2-123. Official printed version of Code — Official electronic version of Code — Printed version to take precedence.
- 1-2-124. Respectful language — Disabilities.

A.C.R.C. Notes. Acts 1989, No. 990 formally codified the legislation from the 1987 Regular Session, the 1987 First and Second Extraordinary Sessions, and the 1988 Third and Fourth Extraordinary Sessions. All codified acts appearing in the acts disposition table (see Tables volumes) for those sessions were formally codified by the act.

Acts 1989, No. 990, §§ 1-12, provided: "SECTION 1. The Arkansas Code sections following section 12 of this Act are amendments or new provisions enacted by the Arkansas General Assembly during the regular and extraordinary sessions of the 76th General Assembly. It is the purpose of this Act to adopt and enact the revision and codification of these enactments as prepared by the Arkansas Code Revision Commission for formal inclusion as part of the Arkansas Code of 1987.

"SECTION 2. (a) It is the intent of the General Assembly that this Act be a codification, revision, modernization, and re-enactment of the laws of Arkansas of a general and permanent nature adopted at the regular session and the 1st, 2nd, 3rd, and 4th extraordinary sessions of the 76th General Assembly which are currently in force.

"(b) It is the intent of the General Assembly that this Act resolve conflicts which exist in the laws and to repeal those laws which have been superseded by the enactment of later laws.

"(c) Except as otherwise specifically provided, the enactment of this Act by the General Assembly is not intended to alter the substantive law or change or alter the effect of any law in existence on December 31, 1988.

"SECTION 3. This Act shall be merged with annotations, captions, catchlines, history lines, editorial notes, cross references, indices, title, chapter and subchapter analyses, and other materials pursuant to the contract entered into on August 1, 1984, between the Arkansas Code Revision Commission and The Michie Company of Charlottesville, Virginia.

"SECTION 4. (a) All acts, all parts of acts, and all amendments to acts, of a general and permanent nature in effect on December 31, 1988, enacted by the 76th Arkansas General Assembly, except Act 267 of 1987, the Arkansas Code of 1987, are repealed unless:

"(1) Expressly continued by specific provision of this Act or other law;

"(2) Omitted improperly or erroneously as a consequence of compilation, revision, or both, of the laws comprising this Act; or

"(3) Omitted, changed, or modified by the Arkansas Code Revision Commission in a manner not authorized by the laws or the Constitution of Arkansas in effect at the time of the omission, change, or modification.

"(b) In the event one of the above exceptions should be applicable, the law as it

existed on December 31, 1988, shall continue to be valid, effective, and controlling, except as otherwise provided by any act of the 77th General Assembly.

"(c) The adoption of this Act shall not be construed to repeal any act or section or part of a section of an act in effect on December 31, 1988, and omitted from this act, which:

"(1) Is of a local or special nature;

"(2) Relates to or applies to only one (1) county, municipality, political subdivision, district, or territory;

"(3) Applies to one (1) or more counties, municipalities, political subdivisions, districts, or territories on the basis of population;

"(4) Applies to one (1) or more counties, municipalities, political subdivisions, districts, or territories on the basis of the number of counties, municipalities, political subdivisions, districts, or territories;

"(5) Applies to one (1) or more judicial districts or one (1) or more counties within a judicial district, whether by specific reference thereto or by some other method of identification or classification;

"(6) Establishes the amount or rate of salary or compensation of any state officer or employee or any other person whose salary or compensation is paid by this state, in whole or in part, or which establishes minimum or maximum amounts or sets specific amounts of salary or compensation or which provides additional compensation for the performance of specified services or duties; or

"(7) Appropriates funds from any source.

"(d) The enactment and adoption of this Act shall not affect or repeal the acts passed at the regular session of the 77th General Assembly. All such acts shall have full effect and, so far as those acts vary from or conflict with any provision contained in this Act, they shall have the effect of subsequent acts and as amending, repealing, or adding to the Arkansas Code of 1987.

"SECTION 5. The adoption of this Act shall not validate an act or validate any section or part of a section of an act, which act or section or part of a section of an act is constitutionally invalid.

"SECTION 6. Unless otherwise provided, the adoption of this Act shall not invalidate or affect any rules or regulations which are in effect on July 1, 1989,

promulgated pursuant to authority given by law. These rules and regulations shall remain in force until repealed, replaced, or invalidated.

"SECTION 7. (a) The adoption of this Act shall not affect or impair any existing right, remedy, or defense nor affect, impair, discharge, or release any existing contract, obligation, duty, or liability of any kind. It shall not affect any pending suit or action, or prosecution now commenced or which shall be hereafter commenced, for any offense committed prior to the effective date of this Act. As to all such suits, actions, and prosecutions, the law in force on December 31, 1988, shall continue in force, except as otherwise provided by any other act of the 77th General Assembly.

"(b) The repeal, repeal and reenactment, or the revision, amendment, or consolidation of any act, or of any section or part of a section of any act, civil or criminal, shall not release, extinguish, alter, modify, or change, in whole or in part, any penalty, forfeiture, or liability, either civil or criminal, which shall have been incurred under the act, section, or part thereof unless the repealing, repealing and reenacting, revising, amending, or consolidating act shall expressly so provide. The repealed, repealed and reenacted, revised, amended, or consolidated act, or any section or part of a section of that act, shall be treated and held as still remaining in force for the purpose of sustaining any and all suits, actions, or prosecutions, civil or criminal, for the enforcement of any penalty, forfeiture, or liability, as well as for the purpose of sustaining any judgment, decree, or order which can or may be rendered, entered, or made in such suits, actions, or prosecutions imposing, inflicting, or declaring a penalty, forfeiture, or liability.

"SECTION 8. When a limitation or period of time prescribed in any act in effect on December 31, 1988, for acquiring a right, barring a remedy, or for any other purpose has begun to run before July 1, 1989, and when a limitation or period of time is prescribed in this Act for acquiring the right, barring the remedy, or for any other purpose, then the time which has already run shall be deemed to be part of the time prescribed by the limitation or period in this Act, except as otherwise

provided by any other act of the 77th General Assembly.

"SECTION 9. To the extent possible, Arkansas Code of 1987, title 1, shall apply to this Act.

"SECTION 10. Notwithstanding Arkansas Code § 25-18-205, this Act shall not be printed or included in the Acts of Arkansas.

"SECTION 11. This act shall be effective after midnight, June 30, 1989.

"SECTION 12. The following sections, subsections, and subdivisions amend and are incorporated in and made part of the Arkansas Code of 1987. Where appropriate, they replace the particular chapters, subchapters, sections, subsections, and subdivisions to which they refer."

Publisher's Notes. Sections 1-2-101 through 1-2-118 were drafted by the Arkansas Code Revision Commission and enacted pursuant to Acts 1987, No. 267, § 1, which adopted the Arkansas Code of 1987 Annotated and incorporated it by reference.

Preambles. Acts 1981, No. 308 contained a preamble which read: "Whereas, a large percentage of the laws enacted by the Arkansas General Assembly at each session are so detailed and complicated and couched in such legal language that they are incomprehensible to the average citizen; and

"Whereas, simplification of the language and structure of bills considered and acts passed by the General Assembly would not only be beneficial to the citizens of the State but would reduce the time required to be spent by members of the General Assembly in analyzing the many bills considered each session; and

"Whereas, if laws were written in language which could be understood by the average person the expense to the citizens of Arkansas for employment of legal assistance to interpret laws and to represent such citizens in court to obtain their rights under such laws would be substantially reduced,

"Now therefore"

Effective Dates. Acts 1846, p. 93, § 1: effective on passage.

Acts 2003, No. 623, § 2: Mar. 24, 2003. Emergency clause provided: "It is found

and determined by the General Assembly of the State of Arkansas that the Arkansas Code Revision Commission has contracted for an official electronic version of the Arkansas Code and an official hard copy version of the Arkansas Code; that in some instances it has been discovered that the official electronic version differs from the official hard copy version; that the issue as to which official version takes precedence is a matter within the jurisdiction of the General Assembly to decide; that this act provides that the official hard copy version takes precedence over the official electronic version; and that until this act goes into effect, confusion will exist as to which version takes precedence. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2007, No. 515, § 2: Mar. 28, 2007. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that persons with disabilities and their families should be provided with meaningful opportunities to contribute their perspectives through their experiences concerning issues relating to services, support, and standards that ultimately affect them; that they are at risk every day that their needs and aspirations go unheard. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

1-2-101. Legislative intent of Code.

(a) It is the intent of the General Assembly that this Code, the Arkansas Code of 1987 Annotated, be a recodification, revision, modernization, and reenactment of the laws of Arkansas of a general and permanent nature which are currently in force.

(b) It is the intent of the General Assembly that this Code resolve conflicts which exist in the laws and to repeal those laws which:

- (1) Are obsolete as a result of the passage of time or other causes;
- (2) Have been declared unconstitutional or invalid; or
- (3) Have been superseded by the enactment of later laws.

(c) Except as otherwise specifically provided, the enactment of this Code by the General Assembly is not intended to alter the substantive law in existence on the effective date of this Code. It is not the purpose of the enactment of this Code to change or alter the effect of any law in existence on December 31, 1987.

History. Acts 1987, No. 267, § 1.

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Survey of 1995 Legislation by the Arkansas General Assembly, 18 U. Ark. Little Rock L.J. 279.

1-2-102. Enactment of Code.

(a) The statutory portion of the codification of Arkansas laws prepared by the Arkansas Code Revision Commission and the Michie Company pursuant to a contract entered into on August 1, 1984, is enacted and shall have the effect of statutes enacted by the General Assembly of the State of Arkansas.

(b) The statutory portion of the codification shall be merged with annotations, captions, catchlines, history lines, editorial notes, cross references, indices, title, chapter, and subchapter analyses, and other materials pursuant to the contract and shall be published by authority of the state pursuant to the contract.

History. Acts 1987, No. 267, § 1.

1-2-103. Repeal of prior laws by Code — Exceptions.

(a) All acts, codes, and statutes, and all parts of them and all amendments to them of a general and permanent nature in effect on December 31, 1987, are repealed unless:

- (1) Expressly continued by specific provision of this Code;
- (2) Omitted improperly or erroneously as a consequence of compilation, revision, or both, of the laws enacted prior to this Code, including, without limitation, any omissions that may have occurred during the compilation, revision, or both, of the laws composing this Code; or

(3) Omitted, changed, or modified by the Arkansas Code Revision Commission, or its predecessors, in a manner not authorized by the laws or the constitutions of Arkansas in effect at the time of the omission, change, or modification.

(b) In the event one of the above exceptions should be applicable, the law as it existed on December 31, 1987, shall continue to be valid, effective, and controlling.

History. Acts 1987, No. 267, § 4.

CASE NOTES

ANALYSIS

Absence of Specific Repeal.
Unauthorized Changes.

Absence of Specific Repeal.

In the absence of any specific repeal of former A.S.A. § 81-1313(f)(1) (see now §§ 11-9-519 — 11-9-526), it was improperly or erroneously omitted from the Code, and therefore remains in effect pursuant to subsection (b) of this section. *Death & Permanent Total Disability Trust Fund v. Whirlpool Corp.*, 39 Ark. App. 62, 837 S.W.2d 293 (1992).

Unauthorized Changes.

Substitution of “or” for “and/or” following “permit fee” in § 3-9-223(f) upon codification was not authorized by the laws or the Constitution of Arkansas in effect at the time of the omission, change or modification, and thus the “and/or” language of former A.S.A. § 48-1410 is still controlling. *Cox v. City of Caddo Valley*, 305 Ark. 155, 806 S.W.2d 6 (1991).

Cited: *Echols v. State*, 326 Ark. 917, 936 S.W.2d 509 (1996); *Bourne v. Bd. of Trs. of Little Rock Policeman's Relief Pension Fund*, 347 Ark. 19, 59 S.W.3d 432 (2001).

1-2-104. Omission of validating and curative acts from Code.

The omission from this Code of any act or section or part of a section of an act passed prior to the adoption of this Code shall in no way operate or be construed to repeal or destroy the effect of any act or section or part of a section where the act or section or part of a section has been otherwise lawfully passed, is not in conflict with the Constitution of the United States or the Arkansas Constitution of 1874, and:

(1) Validates any bonds, notes, warrants, certificates, or other evidences of indebtedness issued by any officer, political subdivision, or instrumentality of this state;

(2) Validates any action or cures any defect of any action of any public officer, political subdivision, or instrumentality of this state;

(3) Cures any defect in any title to property; or

(4) Validates any action or cures any defect in any action of any person, natural or artificial, public or private.

History. Acts 1987, No. 267, § 1.

1-2-105. Adoption of Code not to affect certain acts.

The adoption of this Code shall not be construed to repeal any act or section or part of a section of an act in effect on December 31, 1987, and omitted from this Code, which:

- (1) Is of a local or special nature;
- (2) Relates to or applies to only one (1) county, municipality, political subdivision, district, or territory;
- (3) Applies to one (1) or more counties, municipalities, political subdivisions, districts, or territories on the basis of population;
- (4) Applies to one (1) or more counties, municipalities, political subdivisions, districts, or territories on the basis of the number of counties, municipalities, political subdivisions, districts, or territories;
- (5) Applies to one (1) or more judicial districts or one (1) or more counties within a judicial district, whether by specific reference thereto or by some other method of identification or classification;
- (6) Establishes the amount or rate of salary or compensation of any state officer or employee or any other person whose salary or compensation is paid by this state, in whole or in part, or which establishes minimum or maximum amounts or sets specific amounts of salary or compensation or which provides additional compensation for the performance of specified services or duties; or
- (7) Appropriates funds from any source.

History. Acts 1987, No. 267, § 1.

1-2-106. Adoption of Code not to validate constitutionally invalid acts.

The adoption of this Code shall not validate an act or validate any section or part of a section of an act, which act or section or part of a section of an act is constitutionally invalid.

History. Acts 1987, No. 267, § 1.

1-2-107. Repealed acts not revived by Code.

All acts or parts of acts which are repealed or superseded by this Code or are repugnant to any act repealed by this Code and which have not been reenacted or consolidated shall continue to be so repealed or superseded.

History. Acts 1987, No. 267, § 1.

1-2-108. Adoption of Code not to affect rules and regulations.

Unless otherwise provided, the adoption of this Code shall not invalidate or affect any rules or regulations which were in effect on December 31, 1987, promulgated pursuant to authority given by law. These rules and regulations shall remain in force until repealed, replaced, or invalidated.

History. Acts 1987, No. 267, § 1.

1-2-109. Adoption of Code not to validate invalid, unauthorized, or defective rules and regulations.

The adoption of this Code shall not validate or authorize a rule or regulation, cure any defect in a rule or regulation, or validate, authorize, or cure any section or part of a section of any rule or regulation, which rule or regulation or section or part of a section of the rule or regulation is invalid, unauthorized, or defective.

History. Acts 1987, No. 267, § 1.

1-2-110. Adoption of Code not to affect terms of office, compensation, expenses, etc.

(a) The adoption of this Code shall not affect the term of office or the right to hold office of any person who is in office on December 31, 1987, unless otherwise expressly provided or unless the office is abolished by the adoption of this Code.

(b) The adoption of this Code shall not affect the compensation, expenses, per diem, allowances, retirement, or other rights of any officer or employee of this state or of any county, municipality, district, improvement district, school district, institution of higher education, political subdivision, authority, or other governmental entity within this state, or of any agency, department, division, section, board, commission, committee, or council of any of the above, unless otherwise provided in this Code.

History. Acts 1987, No. 267, § 1.

1-2-111. Adoption of Code not to affect existing rights, liabilities, contracts, actions, etc.

(a) The adoption of this Code shall not affect or impair any existing right, remedy, or defense nor affect, impair, discharge, or release any existing contract, obligation, duty, or liability of any kind. It shall not affect any pending suit or action, or prosecution now commenced or which shall be hereafter commenced, for any offense committed prior to January 1, 1988. As to all such suits, actions, and prosecutions, the law in force on December 31, 1987, shall continue in force.

(b) The repeal, repeal and reenactment, or the revision, amendment, or consolidation of any act, or of any section or part of a section of any act, civil or criminal, shall not release, extinguish, alter, modify, or change, in whole or in part, any penalty, forfeiture, or liability, either civil or criminal, which shall have been incurred under the act, section, or part thereof unless the repealing, repealing and reenacting, revising, amending, or consolidating act shall expressly so provide. The repealed, repealed and reenacted, revised, amended, or consolidated act, or any section or part of a section of that act, shall be treated and held as still remaining in force for the purpose of sustaining any and all suits, actions, or prosecutions, civil or criminal, for the enforcement of any

penalty, forfeiture, or liability, as well as for the purpose of sustaining any judgment, decree, or order that can or may be rendered, entered, or made in such suits, actions, or prosecutions imposing, inflicting, or declaring a penalty, forfeiture, or liability.

History. Acts 1987, No. 267, § 1.

1-2-112. Adoption of Code not to toll limitations.

When a limitation or period of time prescribed in any act in effect on December 31, 1987, for acquiring a right, barring a remedy, or for any other purpose has begun to run before January 1, 1988, and when a limitation or period of time is prescribed in this Code for acquiring the right, barring the remedy, or for any other purpose, then the time which has already run shall be deemed to be part of the time prescribed by the limitation or period in this Code.

History. Acts 1987, No. 267, § 1.

1-2-113. Designation and citation of Code.

(a) This codification of the laws of Arkansas, consisting of this title and the following titles, subtitles, chapters, subchapters, and sections, as amended from time to time, shall constitute and be known as the "Arkansas Code of 1987 Annotated".

(b) As used in acts and resolutions of the General Assembly, and within this Code, "Arkansas Code of 1987 Annotated", "Arkansas Code of 1987", "Arkansas Code Annotated", "Arkansas Code", "the Code", or "this Code", unless the context otherwise requires, shall be construed to refer to this enactment of the Arkansas Code of 1987 Annotated and amendments and revisions thereof and additions and supplements thereto.

(c) Sections of the Code may be cited by the abbreviation "A.C.A." followed by the number of the section. For example, this section would be cited as "A.C.A. § 1-2-113".

History. Acts 1987, No. 267, § 1.

1-2-114. References to Code titles, subtitles, chapters, etc.

(a) Unless the context otherwise requires, references in this Code to titles, subtitles, chapters, subchapters, or sections shall mean titles, subtitles, chapters, subchapters, or sections of this Code.

(b) Unless the context otherwise requires, any reference in this Code or in any law of this state to another provision of this Code or the law of this state shall mean and be construed to refer to the Code or the law as it now or hereafter exists.

History. Acts 1987, No. 267, § 1.

1-2-115. Code classification and organization not to be construed — Notes, headings, etc., not part of law.

(a) The classification and organization of the titles, subtitles, chapters, subchapters, sections, subsections, and subdivisions of this Code, and any headings thereto, are made for the purpose of convenient reference and orderly arrangement, and no implication, inference, or presumption of a legislative construction shall be drawn therefrom.

(b) Unless otherwise provided in this Code, title, chapter, and subchapter analyses, and the descriptive headings or catchlines immediately preceding or within the text of the individual sections of this Code, except the section numbers included in the headings or catchlines immediately preceding the text of the sections, do not constitute part of the law and shall in no manner limit or expand the construction of any section.

(c) All title, chapter, and subchapter analyses, historical citations, annotations, and notes set out in this Code are given for the purpose of convenient reference and do not constitute part of the law.

History. Acts 1987, No. 267, § 1.

1-2-116. Amendments to Code.

(a) All acts enacted after December 31, 1987, of a general and permanent nature shall be enacted as amendments to this Code. No local, private, or temporary acts or provisions and no provisions appropriating funds shall be enacted as amendments to this Code. If the subject matter of any law is already generally embodied in one of the titles of this Code or can be appropriately classified therein, that new law shall be enacted as an amendment to that title of the Code. If it is not possible to classify the subject matter of a new law in an existing title, a new title shall be enacted containing the new law as a chapter or chapters, each chapter to contain a proper designation and descriptive name or heading, as provided in subsection (c) of this section.

(b) A new title shall be created only as a last resort and only when it would be unreasonable to include the new law in an existing title. If a new title is created, it shall be given a name and a number sequentially following that of the last title number. New titles shall be given names which are broad and comprehensive in scope so that each will accommodate the greatest number of new laws having related subject matter.

(c) The reserved sections, subchapters, chapters, and subtitles are for the purpose of accommodating future growth and expansion of the law, thereby permitting the insertion in the Code of new laws in their most logical positions with respect to existing related laws. When a new unit is enacted it shall be given a name, which shall be sufficiently broad and comprehensive to describe generally its subject matter, and a number designating its position within a title. The name is not to be confused with the title of a bill.

(d) A unit should be repealed, as distinct from amended, when an outright repeal thereof is intended or when the subject matter of the proposed new law is more than a mere amendment or revision of the old unit.

(e) When sections of this Code are amended, the descriptive headings or catchlines immediately preceding or within them need not be amended. When new sections are enacted, descriptive headings or catchlines need not be enacted to accompany them except that any desired changes in the section numbers contained in the headings or catchlines shall be made by specific statutory amendments of the numbers and new sections shall be assigned proper title section numbers by the law which enacts them.

(f) In the enactment of new laws, the plan, scheme, style, format, arrangement, and classification of this Code shall be followed as closely as possible with the result that the Code and all amendments to it will compose a harmonious entity containing all the laws of the State of Arkansas of a general and permanent nature.

History. Acts 1987, No. 267, § 1.

1-2-117. Severability of provisions of Code.

Except as otherwise specifically provided in this Code, in the event any title, subtitle, chapter, subchapter, section, subsection, subdivision, paragraph, subparagraph, item, sentence, clause, phrase, or word of this Code is declared or adjudged to be invalid or unconstitutional, such declaration or adjudication shall not affect the remaining portions of this Code which shall remain in full force and effect as if the portion so declared or adjudged invalid or unconstitutional was not originally a part of this Code.

History. Acts 1987, No. 267, § 1.

RESEARCH REFERENCES

Ark. L. Rev. Killenbeck, Nothing That We Can Do? Or, Much Ado About Nothing? Some Thoughts on *Bates v. Bates*, Equity, and Domestic Abuse in Arkansas, 43 Ark. L. Rev. 725.

CASE NOTES

Application.

Where the religious exemption in § 6-18-702 was found to violate the First Amendment of the U.S. Constitution, the proper remedy was to “sever” the exemp-

tion from the remainder of the immunization statute. *Boone v. Boozman*, 217 F. Supp. 2d 938 (E.D. Ark. 2002).

Cited: *Hutton v. Savage*, 298 Ark. 256, 769 S.W.2d 394 (1989).

1-2-118. Effective date of Code.

This Code is effective at midnight, December 31, 1987.

History. Acts 1987, No. 267, § 1.

CASE NOTES

Cited: Westside Galvanizing Services, Inc. v. Georgia-Pacific Corp., 921 F.2d 735 (8th Cir. 1990).

1-2-119. Common and statute law of England adopted.

The common law of England, so far as it is applicable and of a general nature, and all statutes of the British Parliament in aid of or to supply the defects of the common law made prior to March 24, 1606, which are applicable to our own form of government, of a general nature and not local to that kingdom, and not inconsistent with the Constitution and laws of the United States or the Constitution and laws of this state, shall be the rule of decision in this state unless altered or repealed by the General Assembly of this state.

History. Rev. Stat., ch. 28, § 1; C. & M. Dig., § 1432; Pope's Dig., § 1679; A.S.A. 1947, § 1-101.

CASE NOTES

ANALYSIS

In General.

Applicability.

Adoption of Statutes.

Common Law.

—In General.

—Civil Doctrines.

—Conflict with Statutes.

—Particular Offenses.

In General.

When Congress extended over the Indian Territory the common law as construed in this state, the act of Congress adopted the construction which the courts of this state placed upon the law. Snellen v. Kansas City S. Ry., 82 Ark. 334, 102 S.W. 193 (1907).

For discussion of history of this section, see Moore v. Sharpe, 91 Ark. 407, 121 S.W. 341 (1909).

Applicability.

This section applies to common law respecting monopolies and restraint of trade. Elizabeth Hosp. v. Richardson, 167 F. Supp. 155 (W.D. Ark. 1958), *aff'd*, 269 F.2d 167 (8th Cir. 1959), *cert. denied*, 361 U.S. 884, 80 S. Ct. 155, 4 L. Ed. 2d 120 (1959).

Adoption of Statutes.

The statute of charitable uses was adopted by this section as part of the law of this state and thus became part of the common law inherited from the mother country. Biscoe v. Thweatt, 74 Ark. 545, 86 S.W. 432 (1905).

Remainderman is not entitled to have estate of life tenant forfeited on the ground that life tenant was committing waste, since Statute of Gloucester permitting such remedy was not made a part of the common law of Arkansas by adoption of this section. Smith v. Smith, 219 Ark. 304, 241 S.W.2d 113 (1951).

Common Law.

—In General.

It is a rule of construction that the common law in force at the time a statute is passed is to be taken into account in construing the statute. State v. Pierson, 44 Ark. 265 (1884).

There is no statute in this state fixing the measure of damages in an appeal involving a determination of the rule by which to measure damages against a bank for refusal to pay a merchant depositor's check, who has sufficient funds on deposit to pay it, so the common-law rule will

control. *McFall v. First Nat'l Bank*, 138 Ark. 370, 211 S.W. 919 (1919).

Where the state made a deposit in a bank which became insolvent, the state was not entitled to preferential payment of its claim over other creditors, the common-law rule of preference of the sovereign over the subject not being applicable. *Maryland Cas. Co. v. Rainwater*, 173 Ark. 103, 291 S.W. 1003 (1927).

At the common law, the unities of time, title, interest, and possession had to be observed in creating an estate by the entirety; where no statutory enactment has changed the rule of the common law, it must control. *Stewart v. Tucker*, 208 Ark. 612, 188 S.W.2d 125 (1945).

There is no common-law authority in the state of Arkansas for the issuance of a search warrant for contraband. *Grimmett v. State*, 251 Ark. 270a, 476 S.W.2d 217 (1972), criticized, *Wood v. Goodson*, 253 Ark. 196, 485 S.W.2d 213 (1972).

—Civil Doctrines.

The common law necessities doctrine is the law in Arkansas and will remain law so long as the doctrine is consistent with the U.S. Constitution and the laws of the United States or the Constitution and laws of this state and shall be the rule of decision in this state unless altered or repealed by the General Assembly. *Davis v. Baxter County Regional Hosp.*, 313 Ark. 388, 855 S.W.2d 303 (1993).

—Conflict with Statutes.

Rule in *Shelley's Case* held to be in force in this state, except insofar as it has been repealed by the section abolishing fees tail. *Horsley v. Hilburn*, 44 Ark. 458 (1884); *Hardage v. Stroope*, 58 Ark. 303, 24 S.W. 490 (1893); *Ryan v. Ryan*, 138 Ark. 362, 211 S.W. 183 (1919); *First Nat'l Bank v. Graham*, 195 Ark. 586, 113 S.W.2d 497 (1938).

Even if a present contract of marriage between a man and a woman, followed by cohabitation, is valid at common law, the common law in this respect has never obtained in this state, in view of the statute regulating the method of solemnizing marriages and designating who are authorized to solemnize them. *Furth v. Furth*, 97 Ark. 272, 133 S.W. 1037 (1911).

The adoption of the statute relating to conspiracies did not repeal the common law relating to conspiracies except as to

the particulars named in the statute. *Powell v. State*, 133 Ark. 477, 203 S.W. 25 (1918).

The common-law rule with respect to sales of crops under execution is impliedly in conflict with statute which provides that leasehold estates shall not be subject to sale under execution issued by a justice of the peace. *First Nat'l Bank v. Evans*, 159 Ark. 182, 251 S.W. 712 (1923).

—Particular Offenses.

For discussion of gaming houses and poolrooms as common law nuisances, see *Norton v. State*, 15 Ark. 71 (1854); *Thatcher v. State*, 48 Ark. 60, 2 S.W. 343 (1886); *State v. Vaughan*, 81 Ark. 117, 98 S.W. 685 (1906), criticized, *Fox v. Harrison*, 178 Ark. 1189, 13 S.W.2d 808 (1929); *Blumensteil v. State*, 148 Ark. 421, 230 S.W. 262 (1921); *Fox v. Harrison*, 178 Ark. 1189, 13 S.W.2d 808 (1929).

Permitting a prisoner to escape through the negligence of the sheriff's custodian was a common law offense. *Perrymore v. State*, 189 Ark. 519, 73 S.W.2d 470 (1934).

At common law the Attorney General could institute equitable proceedings for the abatement of public nuisances which affected or endangered the public safety or convenience. *State ex rel. Williams v. Karston*, 208 Ark. 703, 187 S.W.2d 327 (1945).

Offense of treating a dead body indecently is an offense at common law. *Baker v. State*, 215 Ark. 851, 223 S.W.2d 809 (1949).

The common-law prohibition against holding court or performing judicial acts on Sunday is still in force in Arkansas. *Chester v. Arkansas State Bd. of Chiropractic Exmrs.*, 245 Ark. 846, 435 S.W.2d 100 (1968).

Cited: *Thorn v. Weatherly*, 50 Ark. 237, 7 S.W. 33 (1888); *Eureka Springs Ry. v. Timmons*, 51 Ark. 459, 11 S.W. 690 (1889); *Garner v. Wright*, 52 Ark. 385, 12 S.W. 785, 6 L.R.A. 715 (1890); *Ex parte Dame*, 162 Ark. 382, 259 S.W. 754 (1923); *Bennett v. Taylor*, 185 Ark. 794, 49 S.W.2d 608 (1932); *State v. Phillips Petroleum Co.*, 212 Ark. 530, 206 S.W.2d 771 (1947); *Vance v. Hinch*, 222 Ark. 494, 261 S.W.2d 412 (1953); *Wawak v. Stewart*, 247 Ark. 1093, 449 S.W.2d 922 (1970); *Wright v. Wright*, 248 Ark. 105, 449 S.W.2d 952 (1970); *Lucas v. Handcock*, 266 Ark. 142, 583 S.W.2d 491 (1979); *Meadows v. State*, 291 Ark. 105, 722 S.W.2d 584 (1987);

Smith v. Wright, 300 Ark. 416, 779 S.W.2d 177 (1989).

1-2-120. Effect of repeal of statute.

(a) When a statute is repealed and the repealing statute is afterwards repealed, the first statute shall not thereby be revived unless by express words.

(b) When any criminal or penal statute is repealed, all offenses committed or forfeitures accrued under it while it was in force shall be punished or enforced as if it were in force, notwithstanding the repeal, unless otherwise expressly provided in the repealing statute.

(c) No action, plea, prosecution, or proceeding, civil or criminal, pending at the time any statutory provision is repealed shall be affected by the repeal but shall proceed in all respects as if the statutory provision had not been repealed.

History. Rev. Stat., ch. 129, § 31; Rev. Stat., ch. 146, § 1; Acts 1846, § 1, p. 93; C. & M. Dig., §§ 9757-9759; Pope's Dig., §§ 13282-13284; A.S.A. 1947, §§ 1-102 — 1-104.

Cross References. Effect of amendment or repeal of statute defining criminal offense, § 5-1-103(e).

CASE NOTES

ANALYSIS

Purpose.
Applicability.
Criminal or Penal Statutes.
Pending Proceedings.
Revival.

Purpose.

It is not the purpose of subsection (c) of this section to prohibit the passage of subsequent legislation regulating the venue of actions to enforce existing rights, nor to regulate the procedure under which those rights might be enforced. *Fort Smith Gas Co. v. Kincannon*, 202 Ark. 216, 150 S.W.2d 968 (1941).

Applicability.

Subsections (b) and (c) of this section apply only to statutes of the state and not municipal ordinances. *Helena v. Russwurm*, 188 Ark. 968, 68 S.W.2d 1009 (1934).

Criminal or Penal Statutes.

Force and effect of subsection (b) of this section recognized and upheld. *McCuen v. State*, 19 Ark. 630 (1858); *Volmer v. State*, 34 Ark. 487 (1879); *Cloud v. State*, 36 Ark. 151 (1880), questioned, *Wilson v. State*, 64

Ark. 586, 43 S.W. 972 (1898); *Western Union Tel. Co. v. State*, 82 Ark. 309, 101 S.W. 748 (1907).

Indictment for illegal sale of intoxicating liquor was still valid after passage of act incorporating city which repealed all laws theretofore passed respecting the sale of liquors with respect to such city. *McCuen v. State*, 19 Ark. 634 (1858).

Where person was tried for selling liquor to minor prior to enactment of statute making it an offense to be interested in such sale, instruction in conformity to later law was improper. *Cloud v. State*, 36 Ark. 151 (1880), questioned, *Wilson v. State*, 64 Ark. 586, 43 S.W. 972 (1898).

Statutes on rape and carnal abuse, which were repealed after the offense was committed, would be treated as remaining in force for the purpose of a trial for those offenses. *Clark v. State*, 246 Ark. 876, 440 S.W.2d 205 (1969), questioned, *State v. Townsend*, 314 Ark. 427, 863 S.W.2d 288 (1993) (decision under prior law).

A change in the definition of murder was substantive rather than procedural, and the older definition would be controlling even if it had been repealed after the commission of the homicide. *Degler v. State*, 257 Ark. 388, 517 S.W.2d 515 (1975).

Although the legislature dropped prophylhexedrine from the statutory schedule of controlled substances after the date of the offense, the delivery of prophylhexedrine was not effectively decriminalized and defendant could be convicted of the charged offenses; the amendment did not decriminalize his or her conduct. *Hudson v. State*, 53 Ark. App. 111, 919 S.W.2d 518 (1996).

Defendant convicted on a plea of *nolo contendere* to sexual misconduct was not entitled to an arrest of judgment; although § 5-14-107, the statute defining sexual misconduct as a criminal offense, was repealed before defendant entered his or her plea of *nolo contendere*, the statute was in effect at the time he or she committed the offense. *Holt v. State*, 85 Ark. App. 151, 147 S.W.3d 699 (2004).

Pending Proceedings.

Act repealing law which permitted citizens to sign petitions for change of the boundaries of school districts applied to proceedings on such a petition pending in a circuit court at the time of passage of the act as no private rights were involved. *School Dist. No. 11 v. School Dist. No. 20*, 63 Ark. 543, 39 S.W. 850 (1897).

Repealed by laws held applicable to proceedings pending at time of repeal. *State v. Lane*, 134 Ark. 71, 203 S.W. 17 (1918); *Carle v. Gehl*, 193 Ark. 1061, 104 S.W.2d 445 (1937); *Wallace v. Todd*, 195 Ark. 134, 111 S.W.2d 472 (1937); *Kosek v. Walker*, 196 Ark. 656, 118 S.W.2d 575 (1938); *Kansas City Life Ins. Co. v. Moss*, 196 Ark. 553, 118 S.W.2d 873 (1938); *McAllister v. Wright*, 197 Ark. 1156, 127 S.W.2d 645 (1939).

Where the chancery court assumed jurisdiction in proceedings to wind up the affairs of a highway improvement district before repeal of act which created the

highway district, the court had jurisdiction to continue the proceeding to completion. *South Miller County Hwy. Dist. v. Dorsey*, 174 Ark. 553, 297 S.W. 833 (1927).

Subsection (c) of this section has reference to substantive law and does not apply to mere changes in procedure. *Fort Smith Gas Co. v. Kincannon*, 202 Ark. 216, 150 S.W.2d 968 (1941); *Saint Louis S.W. Ry. v. Robinson*, 228 Ark. 418, 308 S.W.2d 282 (1957), questioned, *Cobb v. Atkins*, 239 Ark. 151, 388 S.W.2d 8 (1965); *Office of Emergency Servs. v. Home Ins. Co.*, 2 Ark. App. 185, 618 S.W.2d 573 (1981).

Where case was pending when statute was repealed, the substantive rule of comparative negligence embodied in that statute was continued in force by the saving clause of this section. *Saint Louis S.W. Ry. v. Robinson*, 228 Ark. 418, 308 S.W.2d 282 (1957), questioned, *Cobb v. Atkins*, 239 Ark. 151, 388 S.W.2d 8 (1965); *Johnson v. Brewer*, 228 Ark. 946, 311 S.W.2d 301 (1958).

Revival.

Subsection (a) of this section prohibiting revival not applicable where repeal of special exception to general law expressly made preexisting law applicable to counties previously excepted. *White River Lumber Co. v. White River Drainage Dist.*, 141 Ark. 196, 216 S.W. 1043 (1919).

When a statute is repealed and the repealing statute is later repealed, the first statute is not revived unless by express words and this cannot be done if the intent is to pass a local or special act. *Cragar v. Thompson*, 212 Ark. 178, 205 S.W.2d 180 (1947).

Cited: *Faucette v. Patterson*, 140 Ark. 628, 216 S.W. 300 (1919); *Gill v. Saunders*, 182 Ark. 453, 31 S.W.2d 748 (1930); *Chism v. Phelps*, 228 Ark. 936, 311 S.W.2d 297 (1958); *State v. Ziegenbein*, 282 Ark. 162, 666 S.W.2d 698 (1984).

1-2-121. Bills and laws to be clear and unambiguous.

No bill shall be considered and no law enacted unless the bill or law is written in clear, unambiguous language.

History. Acts 1981, No. 308, § 1; A.S.A. 1947, § 1-106.

1-2-122. Laws requiring use of registered mail — Alternative use of certified mail.

(a) Anything permitted or required by the laws of this state to be served or transmitted by registered mail, except when required by any law promulgated by the National Conference of Commissioners on Uniform State Laws and referred to as a uniform state law, may be transmitted either by registered mail or by certified mail with return receipt requested, and return receipts for the delivery of certified mail shall be received in the courts as evidence of delivery to the same extent as return receipts for the delivery of registered mail.

(b) When service of summons, process, or notice is provided for and permitted by registered or certified mail under the laws of Arkansas, delivery shall not be restricted to the United States Postal Service. It shall be deemed an actual and valid service of the summons, process, or notice when an alternative mail carrier delivers the summons, process, or notice by the same or similar process as required by law.

History. Acts 1959, No. 255, § 1; A.S.A. 1947, § 1-105; Acts 1993, No. 269, § 1.

Publisher's Notes. The January 24, 2002, amendments to Ark. R. Civ. P. 4(d)(8)(C) and Ark. R. Civ. P. 5(b) are deemed to supersede subsection (b) of this section with respect to the service of pro-

cess and other papers. See Addition to Reporter's Notes, 2002 Amendment, at Ark. R. Civ. P. 4 and Ark. R. Civ. P. 5.

Cross References. Notice — Knowledge, § 4-1-202.

Service of notices, registered or certified mail, § 16-55-115.

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Legislative Survey, Civil Procedure, 16 U. Ark. Little Rock L.J. 85.

CASE NOTES

Cited: *Bruce v. Paxton*, 31 F.R.D. 197 (E.D. Ark. 1962).

1-2-123. Official printed version of Code — Official electronic version of Code — Printed version to take precedence.

If the official electronic version of the Arkansas Code differs from the official hard copy version of the Arkansas Code, the hard copy version shall take precedence over the electronic version.

History. Acts 2003, No. 623, § 1.

Publisher's Notes. The Arkansas Code of 1987 Annotated, as published by

LexisNexis, is the official version of the Arkansas Code.

1-2-124. Respectful language — Disabilities.

(a)(1) The General Assembly recognizes that language used in reference to individuals with disabilities shapes and reflects society's attitudes toward people with disabilities. Many of the terms currently used demean the humanity and natural condition of having a disability. Certain terms are demeaning and create an invisible barrier to inclusion as equal community members.

(2) The General Assembly finds it necessary to clarify preferred language for new and revised laws by requiring the use of terminology that puts the person before the disability.

(b)(1) In any bill or resolution, the Bureau of Legislative Research shall avoid all references to:

- (A) "Disabled";
- (B) "Developmentally disabled";
- (C) "Mentally disabled";
- (D) "Mentally ill";
- (E) "Mentally retarded";
- (F) "Handicapped";
- (G) "Cripple"; and
- (H) "Crippled".

(2) The Arkansas Code Revision Commission shall change such references in any existing statute or resolution as sections including these references are republished or otherwise amended by law.

(3) The Bureau of Legislative Research and the Arkansas Code Revision Commission shall replace the inappropriate terms in subdivision (b)(1) of this section with the following terms:

- (A) "Individuals with disabilities";
- (B) "Individuals with developmental disabilities";
- (C) "Individuals with mental illness";
- (D) "Individuals with mental retardation"; and
- (E) "Individuals with intellectual disabilities".

(c) A statute or resolution is not invalid because it does not comply with this section.

History. Acts 2007, No. 515, § 1.

SUBCHAPTER 2 — CONSTRUCTION**SECTION.**

- 1-2-201. Applicability of §§ 1-2-202 and 1-2-203.
- 1-2-202. Liberal construction.
- 1-2-203. Words importing number and gender.
- 1-2-204. "Heretofore" and "hereafter".

SECTION.

- 1-2-205. General severability.
- 1-2-206. Effect of construction of statute by circuit court.
- 1-2-207. Identical acts — Same subject matter.

Effective Dates. Acts 1993, No. 1167, § 6: Apr. 15, 1993. Emergency clause pro-

vided: "It is hereby found and determined by the General Assembly that it is not

uncommon that multiple acts are enacted each session by the General Assembly dealing with the same subject matter; that it is unclear as to which law prevails in that instance; this act establishes rules of construction to clarify the confusion and should therefore be given immediate ef-

fect. Therefore, an emergency is hereby declared to exist, and this act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

RESEARCH REFERENCES

Am. Jur. 73 Am. Jur. 2d, Statutes, § 142 et seq.

Ark. L. Notes. Mullane, Statutory Interpretation in Arkansas: How Should a Statute Be Read? When is it Subject to Interpretation? What Our Courts Say and What They Do, 2004 Arkansas L. Notes 85.

Mullane, Statutory Interpretation in Arkansas: How Arkansas Courts Interpret Statutes. A Rational Approach, 2005 Arkansas L. Notes 73.

C.J.S. 82 C.J.S., Statutes, § 311 et seq.

1-2-201. Applicability of §§ 1-2-202 and 1-2-203.

The rules prescribed in §§ 1-2-202 and 1-2-203 shall apply in all cases, both civil and criminal, unless it is otherwise specially provided or unless there is something in the context or subject matter repugnant to that construction.

History. Rev. Stat., ch. 129, § 23; C. & M. Dig., § 9729; Pope's Dig., § 13255; A.S.A. 1947, § 1-204.

CASE NOTES

Title and Emergency Clause.

When the meaning of a statute is ambiguous, the court will look at either the title or the emergency clause, or both, in order to determine legislative intent, but when the language of a statute is certain

and the intent obvious from that language, the court need not resort to a search of the title or emergency clause. *Quinney v. Pittman*, 320 Ark. 177, 895 S.W.2d 538 (1995).

1-2-202. Liberal construction.

All general provisions, terms, phrases, and expressions used in any statute shall be liberally construed in order that the true intent and meaning of the General Assembly may be fully carried out.

History. Rev. Stat., ch. 129, § 22; C. & M. Dig., § 9728; Pope's Dig., § 13254; A.S.A. 1947, § 1-203.

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Survey of 1995 Legislation by the Arkansas General Assembly, 18 U. Ark. Little Rock L.J. 279.

CASE NOTES

ANALYSIS

In General.
Eminent Domain.
Legislative Intent.
Title and Emergency Clause.

In General.

A cardinal rule in dealing with a statutory provision is to give it a consistent and uniform interpretation so that it is not taken to mean one thing at one time and something else at another time. *Morris v. McLemore*, 313 Ark. 53, 852 S.W.2d 135 (1993).

When a statute has been construed, and that construction has been consistently followed for many years, such construction ought not be changed; as time passes, the interpretation given a statute becomes a part of the statute itself. *Morris v. McLemore*, 313 Ark. 53, 852 S.W.2d 135 (1993).

A particular provision in a statute must be construed with reference to the statute as a whole. *Boyd v. State*, 313 Ark. 171, 853 S.W.2d 263 (1993).

Eminent Domain.

Statutes delegating the powers of eminent domain are to be strictly construed in

favor of the landowner. *Nature Conservancy v. Kolb*, 313 Ark. 110, 853 S.W.2d 864 (1993).

Legislative Intent.

It is necessary to construe the sections of the statute under consideration in a manner consistent with a reasonable interpretation of the language used, so as to carry out the real intention of the legislature. *Brown v. Nelms*, 86 Ark. 368, 112 S.W. 373 (1908).

Title and Emergency Clause.

When the meaning of a statute is ambiguous, the court will look at either the title or the emergency clause, or both, in order to determine legislative intent, but when the language of a statute is certain and the intent obvious from that language, the court need not resort to a search of the title or emergency clause. *Quinney v. Pittman*, 320 Ark. 177, 895 S.W.2d 538 (1995).

Cited: *Chicago, R. I. & P. R. Co. v. Jaber*, 85 Ark. 232, 107 S.W. 1170 (1908); *Lindley & Marshall v. State*, 91 Ark. 284, 120 S.W. 987 (1909).

1-2-203. Words importing number and gender.

(a) When any subject matter, party, or person is described or referred to by words importing the singular number or the masculine gender, several matters and persons, and females as well as males, and bodies corporate as well as individuals, shall be deemed to be included.

(b) Whenever, in any statute, words importing the plural number are used in describing or referring to any matter, parties, or persons, any single matter, party, or person shall be deemed to be included, although distributive words may not be used.

History. Rev. Stat., ch. 129, §§ 20, 21; §§ 13252, 13253; A.S.A. 1947, §§ 1-201, C. & M. Dig., §§ 9726, 9727; Pope's Dig., 1-202.

CASE NOTES

ANALYSIS

Corporations.
Gender.
Plural and Singular.

Corporations.

The rule that the word "person" includes a corporation as well as a natural person must be understood only of such provisions as will allow the signification to be given without violating its evident sense and meaning; when by the context it is clear no such meaning was intended and when by thus construing the word "person," it would render the provision ineffective, a departure must be made from the letter to give effect to the spirit and manifest intent of the legislature. *Boone County v. Keck*, 31 Ark. 387 (1876).

Statute regulating the practice of op-

tometry by persons was construed to include corporations as well as individuals. *State ex rel. Attorney Gen. v. Gus Blass Co.*, 193 Ark. 1159, 105 S.W.2d 853 (1937).

Gender.

By statutory rule of construction, the word "man" includes a woman. *Smith v. Allen*, 31 Ark. 268 (1876).

Plural and Singular.

By statutory rule of construction, the word "children" includes a child. *Smith v. Allen*, 31 Ark. 268 (1876).

Cited: *Walton v. Tull*, 234 Ark. 882, 356 S.W.2d 20, 8 A.L.R.3d 708 (1962); *Rohrscheib v. Barton-Lexa Water Ass'n*, 246 Ark. 145, 437 S.W.2d 230 (1969); *Hayes v. State*, 280 Ark. 509, 660 S.W.2d 648 (1983); *Dansby v. State*, 319 Ark. 506, 893 S.W.2d 331 (1995).

1-2-204. "Heretofore" and "hereafter".

Whenever the term "heretofore" occurs in any statute, it shall be construed to mean any time previous to the day when the statute shall take effect. Whenever the term "hereafter" occurs, it shall be construed to mean the time after the statute containing the term shall take effect.

History. Rev. Stat., ch. 129, § 19; A.S.A. 1947, § 1-206.

CASE NOTES

Hereafter.

In initiated county act which provided "The offices of sheriff and ex officio collector are hereby severed and hereafter there shall be a tax collector elected in the manner provided by law, same as other county officers, at the general election,"

the word "hereafter" meant "thereafter," since the collector could not be elected until the general election following the general election at which the act was adopted. *Baker v. Allen*, 204 Ark. 818, 164 S.W.2d 1004 (1942).

1-2-205. General severability.

The provisions of each and every act enacted by the General Assembly after July 24, 1973, are declared to be severable and, unless it is otherwise specifically provided in the particular act, the invalidity of any provision of that act shall not affect other provisions of the act which can be given effect without the invalid provision.

History. Acts 1973, No. 92, § 1; A.S.A. 1947, § 1-207.

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Notes, Constitutional Law — The Domestic Abuse Act of 1989 — An Impermissible Expansion of Chancery Jurisdiction. *Bates v. Bates*, 303 Ark. 89, 793 S.W.2d 788 (1990), 13 U. Ark. Little Rock L.J. 537.

CASE NOTES

In General.

The presence of a severability clause is a factor to be considered but, by itself, it may not be determinative. *United States*

Term Limits, Inc. v. Hill, 316 Ark. 251, 872 S.W.2d 349 (1994), *aff'd*, 514 U.S. 779, 115 S. Ct. 1842, 131 L. Ed. 2d 881 (1995).

1-2-206. Effect of construction of statute by circuit court.

Whenever, by the decision of any circuit court, a construction may be given to any penal or other statute, every act done in good faith in conformity with that construction after the making of the decision, and before the reversal thereof by the Supreme Court of Arkansas, shall be so far valid that the party doing the act shall not be liable to any penalty or forfeiture for any act that shall have been adjudged lawful by the decision of the circuit court.

History. Rev. Stat., ch. 117, § 40; C. & M. Dig., § 9731; Pope's Dig., § 13257; A.S.A. 1947, § 1-205.

RESEARCH REFERENCES

Ark. L. Rev. Statutes — Officer — Liability for Acting Under Unconstitutional Statute, 10 Ark. L. Rev. 508.

CASE NOTES

Good Faith.

When the parties made contract after a case interpreting relevant statute had been reversed by Supreme Court, they did not act in good faith relying on the decision of the chancery court after it had been reversed. *Wiseman v. Gillioz*, 192 Ark. 950, 96 S.W.2d 459 (1936).

Although this section does not say "act

done in good faith reliance upon that construction," the words "act done in good faith in conformity with that construction" have been inferred to mean the same thing. *Gleghorn v. Ford Motor Credit Co.*, 293 Ark. 289, 737 S.W.2d 451 (1987).

Cited: *Wiseman v. Phillips*, 191 Ark. 63, 84 S.W.2d 91 (1935).

1-2-207. Identical acts — Same subject matter.

(a)(1) When identical acts are enacted by the General Assembly during the same session, the act which the Governor signs last shall be deemed to have repealed the earlier enactment.

(2) If the Governor does not sign one (1) or both of the acts then the act which was last voted on by either house of the General Assembly shall be deemed to have repealed the other identical enactments.

(b)(1) When more than one (1) act concerning the same subject matter is enacted by the General Assembly during the same session, whether or not specifically amending the same sections of the Arkansas Code or an uncodified act, all of the enactments shall be given effect except to the extent of irreconcilable conflicts in which case the conflicting provision of the last enactment shall prevail.

(2) The last enactment is the one which the Governor signs last or if the Governor does not sign one of the acts then the last enactment is the act which was last voted on by either house of the General Assembly.

History. Acts 1993, No. 1167, §§ 1, 2; 1999, No. 403, § 1.

SUBCHAPTER 3 — ARKANSAS CODE REVISION COMMISSION

SECTION.

- 1-2-301. Creation — Members.
- 1-2-302. Code Revisor and staff assistance.
- 1-2-303. Powers and duties.
- 1-2-304. Commission not to incur obligations absent appropriated or available funds.

SECTION.

- 1-2-305. [Repealed.]
- 1-2-306. [Repealed.]
- 1-2-307. [Repealed.]

A.C.R.C. Notes. Acts 2005, No. 1260, § 1, provided: “(a)(1) Effective July 1, 2005, employees of the Arkansas Code Revision Commission are transferred to the Bureau of Legislative Research and shall be employees of the bureau.

“(2) Effective July 1, 2005, the person who was employed as Executive Director of the Arkansas Code Revision Commission on June 30, 2005, shall become the code revisor for the Bureau of Legislative Research.

“(b) All of the commission’s records, personnel, property, unexpended balances of appropriations, allocations, and funds are transferred to the Bureau of Legislative Research.

“(c) The Arkansas Code Revision Commission shall retain its powers, duties, and functions with respect to the Arkansas Code but staff support shall be provided by the Bureau of Legislative Research.

“(d)(1) Employees transferred from the Arkansas Code Revision Commission may occupy positions authorized for the Bureau of Legislative Research and Bureau of Legislative Research employees may occupy positions authorized for the Arkansas Code Revision Commission.

“(2) Appropriations authorized for the personal services and operating expenses

of the Arkansas Code Revision Commission may be utilized for the personal services and operating expenses of the Bureau of Legislative Research and appropriations authorized for the personal services and operating expenses of the Bureau of Legislative Research may be utilized for the personal services and operating expenses of the office and employees transferred from the Arkansas Code Revision Commission and for operating expenses of the Arkansas Code Revision Commission.”

Preambles. Acts 1955, No. 246 contained a preamble which read: “Whereas, the General Assembly by Act No. 50 of 1945 created the Arkansas Statute Revision Commission for the purpose of arranging for a compilation of laws of the State of Arkansas, which compilation was published in Annotated and Unannotated editions known as Arkansas Statutes, 1947, and

“Whereas, biennial supplements have been printed since that time, and it is now imperative that continuous supervision be provided for the editorial preparation and publication of replacement volumes;

“Now therefore”

Effective Dates. Acts 1945, No. 50, § 10; Feb. 14, 1945. Emergency clause

provided: "Since there is an immediate and urgent need for revising and digesting the Statutes of Arkansas, which work will require extensive planning, research and preparation, an emergency is hereby declared to exist, and this Act, being deemed necessary for the preservation of the public peace, health and safety, shall become effective from and after its passage and approval."

Acts 1983, No. 651, § 3: Mar. 22, 1983. Emergency clause provided: "It is hereby found and determined by the 74th General Assembly that funds have not heretofore been made available to the Arkansas Statute Revision Commission in sufficient amounts to allow it to function at the level envisioned when it was created; that full time staff and funds to support such staff and expenses are essential; and that money must be available by July 1, 1983 to provide a financial base upon which the Commission can plan its activities. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after the date of its passage and approval."

Acts 1987, No. 334, § 4: Mar. 19, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that the Arkansas Statute Revision Commission, acting under the authority of Act 641 of 1983, entered into a contract on August 1, 1984 with the Michie Company of Charlottesville, Virginia for a codification of the Statutes of the State of Arkansas of a general and permanent nature, and pursuant to such contract, the proposed Arkansas Code of 1987, consisting of 28 titles and 29 printed volumes, has been presented to the General Assembly for enactment by the 76th regular session; that upon enactment of the Code of Arkansas of 1987 by the General Assembly, the name of the Arkansas Statute Revision Commission should be changed to the Arkansas Code Revision Commission, and the duties of said Commission should be enlarged to provide for continuing review, revision, codification, and updating of the Code of 1987, including the incorporation therein of Statutes of a general and permanent nature enacted by the regular session of the 1987 General Assembly, in order that the entire body of the Arkansas Code of 1987 may be

effective January 1, 1988; and that the immediate passage of this Act is necessary to change the name of said Commission to enable the Code Revision Commission to pursue its duties as outlined in this Act without undue delay. Therefore, an emergency is hereby declared to exist and this Act, being immediately necessary for the preservation of the public peace, health, and welfare, shall be in full force and effect upon its passage and approval."

Acts 1987, No. 1009, § 3: Apr. 14, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that because of the case *Ricarte v. State*, CR 86-31, a question has arisen over the validity of Act 1219 of the Extended Session of 1976; that this Act is a reenactment of the former law; and that the immediate passage of this Act is necessary to clarify the state of the law on this issue. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor [sic], it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1997, No. 533, § 8: Mar. 17, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that there are presently inadequate statutory guidelines for the codifications of the acts of the General

Assembly; that this act establishes necessary guidelines; and that this act should go into effect immediately in order that the guidelines will be in effect for the codification of the acts of this regular session. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1999, No. 751, § 9: Mar. 22, 1999. Emergency clause provided: "It is hereby found and determined by the General Assembly that there are presently inadequate statutory guidelines for the codifications of the acts of the General Assembly; this act establishes necessary guidelines; and this act should go into effect immediately in order that the guidelines will be in effect for the codification of the acts of this regular session. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2001, No. 327, § 3: retroactive to Mar. 17, 1997.

Acts 2001, No. 327, § 4: Feb. 21, 2001. Emergency clause provided: "It is hereby found and determined by the Eighty-third General Assembly that the present law pertaining to the powers of the Arkansas Code Revision Commission are too restrictive and that with the changes made by this act, the acts of the General Assembly can be more quickly and efficiently codified; that this act should go into effect as soon as possible so that the codification of the acts of this regular session may occur with as little delay as possible. Therefore,

an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2001, No. 1308, § 16: July 1, 2001. Emergency clause provided: "It is found and determined by the General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 2001 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 2001 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 2001."

Acts 2005, No. 1260, § 4: July 1, 2005. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act requires the Bureau of Legislative Research to assist the Arkansas Code Revision Commission and transfers the staff of the commission to the bureau; that to effectively administer this act the transition should occur at the beginning of the next fiscal year; that the effectiveness of this act on July 1, 2005, is essential to the operation of the commission; and that in the event of an extension of the regular session, the delay in the effective date of this act beyond July 1, 2005, could work irreparable harm upon the proper administration of the preparation of the Arkansas Code. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2005."

RESEARCH REFERENCES

Ark. L. Rev. Statute Revision Commission, 9 Ark. L. Rev. 414.

1-2-301. Creation — Members.

(a)(1) There is created within the legislative branch of government a commission to be known as the Arkansas Code Revision Commission.

(2) The commission shall consist of seven (7) voting members and four (4) nonvoting observer members.

(b)(1) The voting members shall be selected and appointed as follows:

(A) Two (2) members of the Senate appointed by the President Pro Tempore of the Senate;

(B) Two (2) members of the House of Representatives appointed by the Speaker of the House of Representatives; and

(C) Three (3) members of the Bar of Arkansas appointed by the Supreme Court of Arkansas.

(2)(A) The nonvoting observer members shall be:

(i) The Dean of the School of Law of the University of Arkansas at Fayetteville or, if there is no such dean, the individual occupying the position of acting dean;

(ii) The Dean of the School of Law of the University of Arkansas at Little Rock or, if there is no such dean, the individual occupying the position of acting dean;

(iii) The Attorney General or his or her designee; and

(iv) The Director of the Bureau of Legislative Research or his or her designee.

(B) The nonvoting observer members of the commission shall be privileged to attend all meetings of the commission and shall enjoy the full rights of membership on the commission, including the right to discuss matters pending before the commission and to participate in debate of issues before the commission, but shall not cast a vote on any issue pending before the commission.

(C) Each member appointed by the Supreme Court of Arkansas shall serve for a term of four (4) years, and each member appointed by the President Pro Tempore of the Senate and the Speaker of the House of Representatives shall serve for a term of two (2) years.

(D) The appointing authorities shall have power to fill any vacancies occurring in the membership appointed by them.

(E) The commission shall meet and select a chair.

(F)(i) Nonlegislator members shall, to the extent funds are appropriated therefor, be eligible to receive reimbursement for mileage and reimbursement for expenses in accordance with § 25-16-902.

(ii) Legislator members shall be entitled to reimbursement for expenses and per diem at the same rate and from the same source as provided by law for members of the General Assembly attending meetings of interim committees.

History. Acts 1945, No. 50, §§ 1, 8; 1977, No. 665, § 1; 1983, No. 641, §§ 1, 3; A.S.A. 1947, §§ 1-300, 1-303; Acts 1997, No. 250, § 1; 1997, No. 533, § 1; 1999, No. 751, §§ 1, 2; 2001, No. 327, § 1.

A.C.R.C. Notes. Pursuant to § 1-2-207, this section is set out above as amended by Acts 1997, No. 533. Former subsection (f) of this section was amended by Acts 1997, No. 250 to read as follows: “(f) Members of the commission shall not be entitled to compensation for their services but may receive expense reimbursement in accordance with 25-16-901 et seq.”

Acts 2001, No. 327, § 3, provided: “This act shall be effective retroactive to March 17, 1997.”

Acts 2001, No. 327, § 3, provided via an emergency clause that the act shall be effective Feb. 21, 2001. See “Effective Dates” notes at the beginning of this subchapter.

Acts 2005, No. 1260, § 1, provided: “(a)(1) Effective July 1, 2005, employees of the Arkansas Code Revision Commission are transferred to the Bureau of Legislative Research and shall be employees of the bureau.

“(2) Effective July 1, 2005, the person who was employed as Executive Director of the Arkansas Code Revision Commission on June 30, 2005, shall become the code revisor for the Bureau of Legislative Research.

“(b) All of the commission’s records, personnel, property, unexpended balances of appropriations, allocations, and funds are transferred to the Bureau of Legislative Research.

“(c) The Arkansas Code Revision Commission shall retain its powers, duties, and functions with respect to the Arkansas Code but staff support shall be provided by the Bureau of Legislative Research.

“(d)(1) Employees transferred from the Arkansas Code Revision Commission may occupy positions authorized for the Bureau of Legislative Research and Bureau of Legislative Research employees may occupy positions authorized for the Arkansas Code Revision Commission.

“(2) Appropriations authorized for the personal services and operating expenses of the Arkansas Code Revision Commission may be utilized for the personal services and operating expenses of the Bureau of Legislative Research and appropriations authorized for the personal services and operating expenses of the Bureau of Legislative Research may be utilized for the personal services and operating expenses of the office and employees transferred from the Arkansas Code Revision Commission and for operating expenses of the Arkansas Code Revision Commission.”

Publisher’s Notes. Acts 1983, No. 641, § 4, provided that “Nothing in the act would be deemed to terminate the term of any person serving as a member of the Commission at the effective date of its enactment and the terms of existing Commissioners would continue until they expired in accordance with their original appointment.”

Acts 1987, No. 334, § 1, provided that the name of the Arkansas Statute Revision Commission, as established by Acts 1945, No. 50, as amended, is changed to the Arkansas Code Revision Commission, that the latter commission shall succeed to all powers, etc., of the former commission, as now provided by law, that all funds allocated or appropriated to the former commission shall be made available for the support of the new commission and its staff, and that the Arkansas Statute Revision Fund established in the State Treasury under the provisions of Acts 1983, No. 651 shall be known as the Arkansas Code Revision Fund.

1-2-302. Code Revisor and staff assistance.

(a)(1) The Bureau of Legislative Research shall employ a person to serve as Code Revisor.

(2)(A) The Director of the Bureau of Legislative Research shall seek the advice of the Arkansas Code Revision Commission before employing a person as Code Revisor and before terminating the employment of a person who is serving as Code Revisor.

(B) The commission shall be entitled to interview applicants for the position of Code Revisor.

(b) The director shall consult with the commission concerning the duties, authority, and responsibility of the Code Revisor and concerning the code revision duties of other bureau personnel who assist the commission.

History. Acts 1945, No. 50, § 1; 1977, No. 665, § 1; 1983, No. 641, § 1; A.S.A. 1947, § 1-300; Acts 2005, No. 1260, § 2.

A.C.R.C. Notes. Acts 2005, No. 1260, § 1, provided: “(a)(1) Effective July 1, 2005, employees of the Arkansas Code Revision Commission are transferred to the Bureau of Legislative Research and shall be employees of the bureau.

“(2) Effective July 1, 2005, the person who was employed as Executive Director of the Arkansas Code Revision Commission on June 30, 2005, shall become the code revisor for the Bureau of Legislative Research.

“(b) All of the commission’s records, personnel, property, unexpended balances of appropriations, allocations, and funds are transferred to the Bureau of Legislative Research.

“(c) The Arkansas Code Revision Commission shall retain its powers, duties, and functions with respect to the Arkansas Code but staff support shall be provided by the Bureau of Legislative Research.

“(d)(1) Employees transferred from the Arkansas Code Revision Commission may occupy positions authorized for the Bureau of Legislative Research and Bureau of Legislative Research employees may occupy positions authorized for the Arkansas Code Revision Commission.

“(2) Appropriations authorized for the personal services and operating expenses of the Arkansas Code Revision Commission may be utilized for the personal services and operating expenses of the Bureau of Legislative Research and appropriations authorized for the personal services and operating expenses of the Bureau of Legislative Research may be utilized for the personal services and operating expenses of the office and employees transferred from the Arkansas Code Revision Commission and for operating expenses of the Arkansas Code Revision Commission.”

Amendments. The 2005 amendment rewrote this section.

1-2-303. Powers and duties.

(a)(1) The Arkansas Code Revision Commission from time to time shall arrange for the publication of compilations, recompilations, revisions, codifications, or recodifications of or cumulative or noncumulative supplements to the statutes of Arkansas.

(2) The commission shall arrange for the solicitation and receipt of competitive bids for all these publications on such terms as it deems reasonable.

(3) Specifications for the publications shall be drawn under the supervision of and subject to approval by the commission.

(4)(A) Contracts shall be awarded to the lowest responsible bidder, taking into consideration, among other things, estimated time of performance, quality of work, probability of timely and adequate performance, and experience of the company regarding the services sought by the commission.

(B) If the best interests of the state would be served, any and all bids submitted to the commission regarding any publication project may be rejected, and the commission may negotiate any necessary

contract with the party most qualified to perform the services sought by the commission.

(5)(A) The price at which publications under this section shall be sold shall be fixed from time to time by the commission.

(B) If the commission enters into a contract with a publisher for any publication, the price at which the publication under the contract shall be sold shall be fixed from time to time by agreement between the commission and the publisher.

(6) Supplements and replacement volumes published under the supervision of the commission shall be prima facie evidence of the law contained in the supplements and replacement volumes.

(b) In the commission's discretion and subject to the provisions and requirements of § 19-4-1109, the commission may enter into contracts for professional services to the commission, which contracts may include, but are not limited to, the purposes of:

(1)(A) Creating and maintaining up-to-date continuing computerized database banks of the statutes of Arkansas by use of magnetic tape or other means of photographic or electronic preservation and reproduction systems with facilities for electronic access and retrieval.

(B) However, before the commission shall enter into any contract for computerized database banks of the statutes of Arkansas, the commission shall confer with and seek the advice of the President Pro Tempore of the Senate, the Speaker of the House of Representatives, the Legislative Council, and the Director of the Bureau of Legislative Research with respect to the needs and requirements for use of computerized database banks of the statutes of Arkansas:

(i) For electronic access and statutory retrieval in connection with a computerized bill drafting and bill processing system;

(ii) To meet the needs of the General Assembly and the committees of the General Assembly; and

(iii) To assist in the preparation of acts signed by the Governor for printing of the official Acts of Arkansas.

(C) The commission shall confer periodically with the President Pro Tempore of the Senate, the Speaker of the House of Representatives, the Legislative Council, and the director and shall seek their advice with respect to means of upgrading and improving the computerized database banks to meet the needs and requirements for their respective uses;

(2) Providing continuing assistance to the commission in the maintenance of the databases and the appropriate codification of legislation enacted by the General Assembly;

(3) Performing those other services which are determined by the commission from time to time to be reasonably required and necessary in order to maintain availability to the State of Arkansas of up-to-date computerized database indices of the statutes of Arkansas and in furtherance of its duties and authority as otherwise provided by this subchapter and by other provisions of law; and

(4) Preparing a codification of all the statutes in a proposed code of laws to be presented to the General Assembly for approval and

enactment, or, in lieu of a single codification of all of the state's statutes, preparation of recommended codes of a similar subject or nature in proposed titles or chapters of a code for consideration by the General Assembly for enactment from time to time with the overall objective of eventually incorporating all of the state's statutes in a unified codification of those laws.

(c) The Code Revisor and other designated personnel of the Bureau of Legislative Research shall assist the commission:

(1) To make continual studies and conduct reviews of the common law, statutes, and current judicial decisions of the state in order to identify:

(A) Obsolete statutes;

(B) Overlapping and duplicating laws;

(C) Inequitable or inconsistent laws;

(D) Deficiencies in existing laws which contribute to indefiniteness of interpretation of the purpose of those laws or the legislative intent of those laws;

(E) Deficiencies in administrative procedures;

(F) Defects in practice and procedure; and

(G) Deficiencies of due process provisions in the enforcement of the criminal laws of this state;

(2) To prepare initial drafts of corrective legislation to be filed with the Legislative Council no later than April 1 of the next calendar year following the adjournment of each session; and

(3)(A) To make studies of the methods, means, and systems used in the various states for the compilation, codification, revision, and publication of the compilations, codifications, or statutes of those states.

(B) These studies are to be used by the commission in determining means of improving the codification of the statutes of Arkansas and to prepare recommendations to the General Assembly in regard to the codification of statutes.

(d)(1) In exercising the powers and duties imposed upon it by this subchapter, the commission shall not authorize any change in the substance or meaning of any provision of the Arkansas Code or any act of the General Assembly. The bureau shall not change the substance or meaning of any provision of the Arkansas Code or any act of the General Assembly. However, the bureau working under the direction of the commission may:

(A) Correct the spelling of words;

(B) Change capitalization for the purpose of uniformity;

(C) Correct manifest typographical and grammatical errors;

(D) Correct manifest errors in references to laws and other documents;

(E) Correct manifest errors in internal reference numbers;

(F) Substitute the proper Arkansas Code section number, subchapter number, chapter number, subtitle number, title number, or other number or designation for the terms "this act", "the preceding Code section", or any similar words or phrases;

(G) Number, renumber, redesignate, and rearrange chapters, subchapters, sections, subsections, and subdivisions, or any combination or portion of chapters, subchapters, sections, subsections, and subdivisions;

(H) Change internal reference numbers to agree with renumbered chapters, subchapters, sections, subsections, subdivisions, or portions of chapters, subchapters, sections, subsections, and subdivisions;

(I) Substitute the correct calendar date for "the effective date of this act" and other phrases of similar import;

(J) Correct inaccurate references to:

(i) Funds;

(ii) Fund accounts;

(iii) The titles of officers;

(iv) The names of departments or other agencies of the federal government, the state government, or local governments, and the names of other entities; and

(v) The short titles of other laws;

(K) Make any other name changes necessary to be consistent with the laws currently in effect;

(L) Alphabetize definitions and make any necessary changes to conform the definitions sections to Arkansas Code style and format;

(M) Insert or delete hyphens in words to follow correct grammatical usage;

(N) Change numerals or symbols to words or vice versa and add figures or words if they are merely repetitions of written words or vice versa for purposes of uniformity and style;

(O) Change the form of nouns, pronouns, and verbs for purposes of style and grammar;

(P) Correct punctuation;

(Q) Correct word usage;

(R) Change gender-specific language to gender-neutral language; and

(S) Remove obsolete language.

(2) Except as provided in subdivision (d)(1) of this section, the wording, punctuation, and format of sections of acts shall appear in the Arkansas Code exactly as enacted by the General Assembly.

(3) No law may be removed from the Arkansas Code unless specifically repealed by the General Assembly.

(4) Every section of each act which is required to be codified shall be codified as a complete section of the Arkansas Code unless otherwise consented to by the director.

(5) Sections of acts shall not be combined into the same Arkansas Code section unless they are identical or they specifically amend the same Arkansas Code section.

(6)(A) No section of an act shall be codified in more than one (1) place in the Arkansas Code without the prior approval of the director.

(B) If a section is applicable to more than one (1) title, chapter, subchapter, or section of the Arkansas Code, it shall only be codified

in one (1) section unless otherwise consented to by the director, with notes indicating its applicability to other portions of the Arkansas Code.

(7) The commission shall notify the Legislative Council no later than the first Friday of each month of the discovery of problems with the acts or the Arkansas Code and recommend corrections.

(8) The commission shall insert a codifier's note under appropriate Arkansas Code sections to alert the reader to conflicting Arkansas Code provisions and other problems identified by the commission.

(9)(A)(i) The commission shall provide a copy of its conformed acts to the director within one hundred twenty (120) days after the adjournment of each session of the General Assembly.

(ii) The conformed acts may be provided in an electronic format.

(B) As used in subdivision (d)(9)(A) of this section, "conformed acts" means those documents prepared by the commission indicating the differences between the codification of the acts and the original forms of the acts.

(10) If the acts of the General Assembly are in markup format, language overstricken shall not be codified and underlined language shall not be underlined in the Arkansas Code.

(e)(1) Except as provided in subdivision (e)(2) of this section, the commission shall codify every initiated measure enacted by the people of Arkansas and every act of each regular and extraordinary session of the General Assembly.

(2) The commission shall not be required to codify the following language or sections found in initiated measures or acts of the General Assembly:

- (A) Appropriation language;
- (B) Boilerplate language;
- (C) Codification clauses;
- (D) Effective date language;
- (E) Emergency clauses;
- (F) Expiration date language;
- (G) General repealers;
- (H) Intent, purpose, construction, and applicability language;
- (I) Language that specifically refers to an appropriation;
- (J) Sections stating that they are not to be codified;
- (K) Sections that the Legislative Council requests that the commission not codify;
- (L) Local, special, or temporary language; and
- (M) Severability clauses.

(f)(1) The Code Revisor is expected to notify the director on an act-by-act basis within one (1) business day after discovering that a change should be made which requires the prior approval of the director.

(2) The director is expected to respond to the Code Revisor within one (1) business day after receiving notice from the commission.

(g)(1) All uncoded local acts, special acts, and temporary acts, excluding appropriation acts, shall be cumulatively indexed by the

commission using descriptive wording and shall include references to the act numbers and years of enactment.

(2) No later than one hundred twenty (120) days after the adjournment of each legislative session, the Code Revisor shall provide a report to the director and the Legislative Council identifying which acts and parts of acts of the session are to be cumulatively indexed pursuant to subdivision (g)(1) of this section.

(h) The director may delegate his or her authority under this section to another employee of the bureau.

History. Acts 1955, No. 246, §§ 1, 2; 1975 (Extended Sess., 1976), No. 1219, § 1; 1977, No. 665, § 2; 1983, No. 641, § 2; A.S.A. 1947, §§ 1-301, 1-302; Acts 1987, No. 334, § 2; reen. 1987, No. 1009, § 1; Acts 1995, No. 459, § 1; 1997, No. 533, § 2; 1999, No. 751, §§ 3, 4; 2001, No. 327, § 2; 2005, No. 1260, § 3; 2007, No. 436, § 1.

A.C.R.C. Notes. Part of this section was reenacted by Acts 1987, No. 1009, § 1. Acts 1987, No. 834, provided that 1987 legislation reenacting acts passed in the 1976 Extended Session should not repeal any other 1987 legislation and that such other legislation would be controlling in the event of conflict.

Acts 1999, No. 1140, §§ 1-4, provided: "Section 1. (a) The Arkansas Code Revision Commission is authorized to correct 'State Department of Education', 'Arkansas Department of Education', 'Arkansas State Department of Education', 'Education Department', 'Arkansas Education Department', 'State Education Department', or 'Arkansas State Education Department' to 'Department of Education' throughout the Arkansas Code Annotated.

"(b)(1) The commission is authorized to correct 'Department of Education, General Division', 'Arkansas Department of Education, General Division', 'State Department of Education, General Division', 'Arkansas State Department of Education, General Division', 'General Division, Department of Education', 'General Division, Arkansas Department of Education', 'General Division, State Department of Education', 'General Division, Arkansas State Department of Education', 'General Division of the Department of Education', 'General Division of the Arkansas Department of Education', 'General Division of the State Department of Education', or 'General Division of the Arkansas State Department of Education' to 'Department of Education' throughout the Code.

"(2) The commission is authorized to correct 'division' to 'department' throughout the Code where the reference is to the former General Education Division of the Department of Education.

"(c)(1)(A) The commission is authorized to correct 'Education Director', 'Director of Education', 'Director of General Education', 'Director of the General Education Division', 'Director of the General Educational Division', 'Director of Education, General Division', 'Director of the State Department of Education', 'Director of the Arkansas Department of Education', 'Director of the Arkansas State Department of Education', 'Director of the Education Department', 'Director of the State Education Department', 'Director of the Arkansas Education Department', or 'Director of the Arkansas State Education Department', to 'Director of the Department of Education' throughout the Code.

"(B) The commission is authorized to correct 'director of the division' or 'division director' to 'Director of the Department of Education' throughout the Code where the reference is to the director of the former General Education Division of the Department of Education.

"(2)(A)(i) The commission is authorized to correct 'Vocational Education Director', 'Director of the Division of Vocational Education', 'Director of the Division of Vocational and Technical Education', 'Director of the Division of Vocational-Technical Education', 'Director of the Division of Vocational/Technical Education', 'Director of the Vocational Division', 'Director of the Vocational Education Division', 'Director of the Vocational Educational Division', 'Director of the Vo-Tech Division', 'Director of the Vo-Tech Education Division', 'Director of the Vo-Tech Educational Division', 'Director of the Vo/Tech Division', 'Director of the Vo/Tech Education Division', 'Director of the Vo/Tech Educa-

tional Division', 'Director of the Vocational Technical Division', 'Director of the Vocational Technical Education Division', 'Director of the Vocational Technical Educational Division', 'Director of the Vocational-Technical Division', 'Director of the Vocational-Technical Education Division', 'Director of the Vocational-Technical Educational Division', 'Director of the Vocational/Technical Division', 'Director of the Vocational/Technical Educational Division', 'Director of the Vocational and Technical Division', 'Director of the Vocational and Technical Education Division', 'Director of Vocational Education', or 'Director of Vocational and Technical Education' to 'Director of the Department of Workforce Education' throughout the Code.

"(ii) The commission is authorized to correct 'director of the division' or 'division director' to 'Director of the Department of Workforce Education' throughout the Code where the reference is to the director of the former Vocational and Technical Education Division of the Department of Education.

"(B) If the phrase to be corrected as set forth in subdivision (c)(2)(A) of this section is preceded or followed by 'Department of Education', 'State Department of Education', 'Arkansas Department of Education', 'Arkansas State Department of Education', 'Education Department', 'Arkansas Education Department', 'State Education Department', or 'Arkansas State Education Department', the commission is authorized to delete the preceding or following phrase and any punctuation or the word 'of' setting off the phrase to be deleted from the phrase to be corrected throughout the Code.

"(d) The commission is authorized to correct 'Board of Higher Education', 'State Board of Higher Education', 'Arkansas Board of Higher Education', 'Arkansas State Board of Higher Education', 'Higher Education Board', 'Arkansas Higher Education Board', 'State Higher Education Board', or 'Arkansas State Higher Education Board' to 'Arkansas Higher Education Coordinating Board' throughout the Code.

"(e)(1)(A) The commission is authorized to correct 'Division of Vocational Education', 'Division of Vocational and Technical Education', 'Division of Vocational-Technical Education', 'Division of Vocational/

Technical Education', 'Vocational Division', 'Vocational Education Division', 'Vocational Educational Division', 'Vo-Tech Division', 'Vo-Tech Education Division', 'Vo-Tech Educational Division', 'Vo/Tech Division', 'Vo/Tech Education Division', 'Vo/Tech Educational Division', 'Vocational Technical Division', 'Vocational Technical Education Division', 'Vocational Technical Educational Division', 'Vocational-Technical Division', 'Vocational-Technical Education Division', 'Vocational-Technical Educational Division', 'Vocational/Technical Education Division', 'Vocational/Technical Educational Division', 'Vocational and Technical Division', 'Vocational and Technical Education Division', or 'Vocational and Technical Educational Division' to 'Department of Workforce Education' throughout the Code.

"(B) The commission is authorized to correct 'division' to 'department' throughout the Code where the reference is to the former Vocational and Technical Education Division of the Department of Education.

"(2) If the phrase to be corrected as set forth in subdivision (e)(1) of this section is preceded or followed by 'Department of Education', 'State Department of Education', 'Arkansas Department of Education', 'Arkansas State Department of Education', 'Education Department', 'Arkansas Education Department', 'State Education Department', or 'Arkansas State Education Department', the commission is authorized to delete the preceding or following phrase and any punctuation or the word 'of' setting off the phrase to be deleted from the phrase to be corrected throughout the Code.

"(f) The commission is authorized to correct any of the following to 'State Board of Workforce Education and Career Opportunities' throughout the Code:

"(1) 'Board of Vocational Education', 'State Board of Vocational Education', 'Arkansas Board of Vocational Education', 'Arkansas State Board of Vocational Education';

"(2) 'Vocational Board', 'Vocational Education Board', 'Vocational Educational Board', 'State Vocational Education Board', 'State Vocational Educational Board', 'Arkansas Vocational Education Board', 'Arkansas Vocational Educational Board', 'Arkansas State Vocational Educa-

tion Board', 'Arkansas State Vocational Educational Board';

"(3) 'Board of Vocational-Technical Education', 'State Board of Vocational-Technical Education', 'Arkansas Board of Vocational-Technical Education', 'Arkansas State Board of Vocational-Technical Education';

"(4) 'Vocational-Technical Education Board', 'Vocational-Technical Educational Board', 'Arkansas Vocational-Technical Education Board', 'Arkansas Vocational-Technical Educational Board', 'State Vocational-Technical Education Board', 'State Vocational-Technical Educational Board', 'Arkansas State Vocational-Technical Education Board', 'Arkansas State Vocational-Technical Educational Board';

"(5) 'Board of Vocational/Technical Education', 'State Board of Vocational/Technical Education', 'Arkansas Board of Vocational/Technical Education', 'Arkansas State Board of Vocational/Technical Education';

"(6) 'Vocational/Technical Education Board', 'Vocational/Technical Educational Board', 'Arkansas Vocational/Technical Education Board', 'Arkansas Vocational/Technical Educational Board', 'State Vocational/Technical Education Board', 'State Vocational/Technical Educational Board', 'Arkansas State Vocational/Technical Education Board', 'Arkansas State Vocational/Technical Educational Board';

"(7) 'Board of Vocational and Technical Education', 'State Board of Vocational and Technical Education', 'Arkansas Board of Vocational and Technical Education', 'Arkansas State Board of Vocational and Technical Education';

"(8) 'Vocational and Technical Education Board', 'Vocational and Technical Educational Board', 'Arkansas Vocational and Technical Education Board', 'Arkansas Vocational and Technical Educational Board', 'State Vocational and Technical Education Board', 'State Vocational and Technical Educational Board', 'Arkansas State Vocational and Technical Education Board', 'Arkansas State Vocational and Technical Educational Board';

"(9) 'Board of Vo-Tech', 'State Board of Vo-Tech', 'Arkansas Board of Vo-Tech', 'Arkansas State Board of Vo-Tech';

"(10) 'Vo-Tech Board', 'State Vo-Tech Board', 'Arkansas Vo-Tech Board', 'Arkansas State Vo-Tech Board'; and

"(11) 'Board of Vo/Tech', 'State Board of Vo/Tech', 'Arkansas Board of Vo/Tech', 'Arkansas State Board of Vo/Tech'; and

"(12) 'Vo/Tech Board', 'State Vo/Tech Board', 'Arkansas Vo/Tech Board', or 'Arkansas State Vo/Tech Board'.

"(g)(1) The commission is authorized to correct 'Vocational Agriculture Division', 'Vocational-Agriculture Division', 'Vocational/Agriculture Division', 'Vocational and Agriculture Division', 'Vocational Agricultural Division', 'Vocational-Agricultural Division', 'Vocational/Agricultural Division', 'Vocational and Agricultural Division', or 'Vo-Ag Division' to 'agricultural education section' throughout the Code.

"(2)(A) If the phrase to be corrected as set forth in subdivision (g)(1) of this section is preceded by 'Department of Education', 'State Department of Education', 'Arkansas Department of Education', 'Arkansas State Department of Education', 'Education Department', 'Arkansas Education Department', 'State Education Department', or 'Arkansas State Education Department', the commission is authorized to delete the preceding phrase and any punctuation setting off the phrase to be deleted from the phrase to be corrected throughout the Code.

"(B) If the phrase to be corrected as set forth in subdivision (g)(1) of this section is followed by 'of the Department of Education', 'of the State Department of Education', 'of the Arkansas Department of Education', 'of the Arkansas State Department of Education', 'of the Education Department', 'of the Arkansas Education Department', 'of the State Education Department', or 'of the Arkansas State Education Department', the commission is authorized to correct the second phrase to 'of the Department of Workforce Education' throughout the Code.

"(h) The commission is authorized to correct 'Associate Director of the General Education Division of the Department of Finance and Administration' or 'Assistant Director of the General Education Division of the Department of Finance and Administration' to 'Assistant Director for Public School Finance and Administrative Support of the Department of Education' throughout the Code.

"(i) The commission is authorized to correct 'home economics' to 'family and consumer science' in Arkansas Code §§ 6-17-109, 6-51-213, 6-51-215 and 6-65-102.

"Section 2. The Arkansas Code Revision Commission is authorized to correct inaccurate references to the Department of Education, the Director of the Department of Education, the Director of the Department of Workforce Education, the Arkansas Higher Education Coordinating Board, the Department of Workforce Education, the State Board of Workforce Education and Career Opportunities, the agricultural education section, and the Assistant Director for Public School Finance and Administrative Support of the Department of Education and to family and consumer science throughout the Arkansas Code Annotated where the intended reference is manifest.

"Section 3. (a)(1)(A) The Arkansas Code Revision Commission is authorized to make editing changes in any section of the Arkansas Code Annotated which deals with both the General Education Division and the former Vocational and Technical Education Division which are necessary and appropriate in order to delete any reference to the former Vocational and Technical Education Division.

"(B) Any reference to the former Vocational and Technical Education Division as that phrase is used in this Section 3(a)(1) includes references utilizing the incorrect terminology as set forth in Section 1(e) of this act as well as any reference utilizing the correct terminology.

"(2)(A) The commission is authorized to make editing changes in any section of the Code which deals with both the State Board of Education and the former State Board of Vocational Education which are necessary and appropriate in order to delete any reference to the former State Board of Vocational Education.

"(B) Any reference to the former 'State Board of Vocational Education' as that phrase is used in this Section 3(a)(2) includes references utilizing the incorrect terminology as set forth in section 1(f) of this act as well as any reference utilizing the correct terminology.

"(b) 'Editing changes', as used in this Section 3, includes but is not limited to:

"(1) Authority to renumber subdivisions or subsections of the Code where necessary to correct the names of the two (2) former divisions of the Department of Education and to place them in separate subdivisions or subsections;

"(2) Authority to correct nouns, verbs, and pronouns in order to make a sentence grammatically correct; and

"(3) Authority to insert introductory clauses for the purpose of grammatical completeness.

"Section 4. The Arkansas Code Revision Commission is authorized to arrange for the publication of the name and title changes and the accompanying necessary and appropriate editing changes made pursuant to this act in the 1999 supplements to the Arkansas Code only in those sections which are otherwise amended by an act of 1999. The commission shall report to the Legislative Council, in markup format, the changes made pursuant to this act. The report shall be filed with the Legislative Council no later than thirty (30) calendar days after the commission instructs the publisher to make the changes."

Acts 1999, No. 1508, § 15, provided: "The Arkansas Code Revision Commission may utilize its authority under Arkansas Code 1-2-303 to make technical corrections to acts of prior legislative sessions as well as the acts of this 1999 regular session and succeeding sessions."

Acts 2001, No. 327, § 3, provided: "Section 2 shall be retroactive to March 17, 1997."

Acts 2001, No. 327, § 4, provided via an emergency clause that the act shall be effective Feb. 21, 2001. See "Effective Dates" notes at the beginning of this subchapter.

Acts 2001, No. 1553, § 20 provided: "In order to correct internal references in the Arkansas Code of 1987 Annotated to reflect the turn of the century, the Arkansas Code Revision Commission shall have the authority to correct all such references throughout the Arkansas Code."

Acts 2005, No. 1260, § 1, provided: "(a)(1) Effective July 1, 2005, employees of the Arkansas Code Revision Commission are transferred to the Bureau of Legislative Research and shall be employees of the bureau.

"(2) Effective July 1, 2005, the person who was employed as Executive Director of the Arkansas Code Revision Commission on June 30, 2005, shall become the code revisor for the Bureau of Legislative Research.

"(b) All of the commission's records, personnel, property, unexpended balances

of appropriations, allocations, and funds are transferred to the Bureau of Legislative Research.

“(c) The Arkansas Code Revision Commission shall retain its powers, duties, and functions with respect to the Arkansas Code but staff support shall be provided by the Bureau of Legislative Research.

“(d)(1) Employees transferred from the Arkansas Code Revision Commission may occupy positions authorized for the Bureau of Legislative Research and Bureau of Legislative Research employees may occupy positions authorized for the Arkansas Code Revision Commission.

“(2) Appropriations authorized for the personal services and operating expenses of the Arkansas Code Revision Commission may be utilized for the personal services and operating expenses of the Bureau of Legislative Research and appropriations authorized for the personal services and operating expenses of

the Bureau of Legislative Research may be utilized for the personal services and operating expenses of the office and employees transferred from the Arkansas Code Revision Commission and for operating expenses of the Arkansas Code Revision Commission.”

Amendments. The 2005 amendment substituted “The code ... commission” for “The commission shall cause the executive director and other staff members of the commission” in (c); in (d)(1), inserted the second sentence and inserted “the bureau working under the direction of” in the last sentence; substituted “director” for “Bureau of Legislative Research” in (d)(9)(A)(i); substituted “Code Revisor” for “commission” in (f)(1), (f)(2) and (g)(2); and inserted “and the Legislative Council” in (g)(2).

The 2007 amendment substituted “April 1 of the next calendar year following” for “one hundred twenty (120) days after” in (c)(2).

RESEARCH REFERENCES

Ark. L. Notes. Baker, A Short History of the New Arkansas Code, 1988 Ark. L. Notes 53.

Lindsey, Arkansas’s Laws in Limbo: Enacted Laws Not in the Statutes But Now

in the Code and Vice Versa, 1988 Ark. L. Notes 59.

1-2-304. Commission not to incur obligations absent appropriated or available funds.

(a) The Arkansas Code Revision Commission shall not enter into any contracts or incur any financial obligations with publishing firms for the compilation, recompilation, revision, codification, or recodification of the statutes of Arkansas, nor shall the commission enter into contracts for professional services or incur any obligation of a continuing nature as authorized in this subchapter if the expenditure of state funds will be required, unless funds have been appropriated or are available from other sources available to it for that purpose.

(b) In no event shall the commission create a financial commitment or obligation, to be paid by the commission or the State of Arkansas, in excess of the funds available to the commission for the biennial period in which the services or obligations are incurred.

History. Acts 1983, No. 641, § 3; A.S.A. 1947, § 1-303; Acts 1987, No. 334, § 3.

1-2-305. [Repealed.]

Publisher's Notes. This section, concerning the Arkansas Code Revision Fund, was repealed by Acts 2001, No.

1308, § 6. The section was derived from Acts 1983, No. 651, § 1; A.S.A. 1947, § 1-304.

1-2-306. [Repealed.]

A.C.R.C. Notes. Pursuant to § 1-2-207, the repeal of this section by Acts 1995, No. 1256, supersedes its amendment by Acts 1995, No. 232. Subsection (c) of this section was amended by Acts 1995, No. 232, § 1, to read as follows: "(c) All funds collected pursuant to the additional costs levied in this section shall be remitted monthly by the collecting officer to the county treasurer and shall be credited to a fund designated as the Arkansas Code Revision fund. On or before the tenth of each month, the county treasurer shall remit all such funds to the Arkansas Code

Revision Commission. The moneys received by the Arkansas Code Revision Commission shall be deposited in the State Treasury as special revenues and credited to the Arkansas Code Revision Fund."

Publisher's Notes. This section, concerning additional court fees, was repealed by Acts 1995, No. 1256, § 20, as amended by Acts 1995 (1st Ex. Sess.), No. 13, § 4. The section was derived from Acts 1983, No. 651, § 2; A.S.A. 1947, § 1-305; Acts 1987, No. 140, § 1; 1991, No. 904, §§ 1, 20; 1995, No. 232, § 1.

1-2-307. [Repealed.]

Publisher's Notes. This section, concerning a code of state regulations, was repealed by Acts 1997, No. 533, § 3. The

section was derived from Acts 1995, No. 459, § 2.

SUBCHAPTER 4 — COMMISSION ON UNIFORM STATE LAWS**SECTION.**

1-2-401. Creation — Members.

1-2-402. Meetings and organization.

SECTION.

1-2-403. Duties.

RESEARCH REFERENCES

Am. Jur. 73 Am. Jur. 2d, Statutes, § 32.

1-2-401. Creation — Members.

(a) A commission is created to be known as the "Commission on Uniform State Laws". The commission shall consist of three (3) recognized members of the bar who shall be appointed by the Governor for terms of four (4) years each and until their successors are appointed and, in addition thereto, any residents of this state who, because of long service in the cause of uniformity of state legislation, shall have been elected life members of the National Conference of Commissioners on Uniform State Laws.

(b) Upon the death, removal from the state, resignation, failure, or refusal to serve of any appointed commissioner, the appointed office becomes vacant and the Governor shall make an appointment to fill the vacancy for the unexpired term.

History. Acts 1945, No. 159, §§ 1, 2; A.S.A. 1947, §§ 6-401, 6-402.

RESEARCH REFERENCES

Ark. L. Rev. Carroll, Uniform Laws in Arkansas, 52 Ark. L. Rev. 313.

1-2-402. Meetings and organization.

The commissioners of the Commission on Uniform State Laws shall meet at least once in two (2) years and shall organize by means of the election of one (1) of their number as chair and another as secretary, who shall hold their respective offices for a term of two (2) years and until their successors are appointed.

History. Acts 1945, No. 159, § 3; A.S.A. 1947, § 6-403.

1-2-403. Duties.

(a) Each commissioner shall attend the meetings of the National Conference of Commissioners on Uniform State Laws and, both in and out of the National Conference, shall do all in his or her power to promote uniformity in state laws upon all subjects where uniformity may be deemed desirable and practicable.

(b) The Commission on Uniform State Laws shall report to the General Assembly at each regular session, and from time to time thereafter as the commission may deem proper, an account of its transactions and its advice and recommendations for legislation.

(c) It shall also be the duty of the commission to bring about, as far as practicable, the uniform judicial interpretation of all uniform laws.

History. Acts 1945, No. 159, § 4; A.S.A. 1947, § 6-404.

SUBCHAPTER 5 — UNIFORM DEFINITION OF MINORITIES IN THE STATE OF ARKANSAS

SECTION.

1-2-501. Short title.

1-2-502. Legislative findings.

SECTION.

1-2-503. "Minority" defined.

1-2-504. Other definitions of "minority".

1-2-501. Short title.

This subchapter shall be known as the “Minorities in Arkansas Act of 2001”.

History. Acts 2001, No. 1394, § 1.

1-2-502. Legislative findings.

(a) The General Assembly finds that there are great disparities in the definition of “minority” in the Arkansas Code, and it would be advantageous to have a consistent definition of minority in the State of Arkansas.

(b) The General Assembly also recognizes that the number of people settling in Arkansas who are Hispanic immigrants or are of Hispanic background is rapidly increasing, and it would be advantageous to include Hispanics in the definition of minority in Arkansas.

History. Acts 2001, No. 1394, § 2.

1-2-503. “Minority” defined.

For terms of Arkansas law, “minority” means black or African American, Hispanic American, American Indian or Native American, Asian, and Pacific Islander.

History. Acts 2001, No. 1394, § 3.

1-2-504. Other definitions of “minority”.

(a) When enacting specific laws, the definition of minority shall be expanded to include other racial or ethnic groups when it is considered necessary by a legislative body.

(b) However, under no circumstances should the definition of minority exclude black Americans or African Americans, Hispanic Americans, or American Indians or Native Americans.

History. Acts 2001, No. 1394, § 4.

CHAPTER 3

PUBLICATION OF LAWS, REPORTS, ETC.

SECTION.

1-3-101. Penalty.

1-3-102. [Repealed.]

1-3-103. Orders of Public Service Commission and Transportation Commission.

1-3-104. [Repealed.]

1-3-105. Report of commissioners of spe-

SECTION.

cial improvement districts.

1-3-106. Newspapers eligible to publish notices.

1-3-107. Fees for publishing notices.

1-3-108. Publications in more than one newspaper.

1-3-109. Printing of publication cost.

Effective Dates. Init. Meas. 1914, No. 2, § 14: effective on passage. Declared effective by Governor, Oct. 13, 1914.

Acts 1915, No. 83, § 3: approved Feb. 25, 1915. Emergency clause provided: "This Act being necessary for the immedi-

ate protection of the public peace, health and safety, an emergency is hereby declared to exist, and this Act shall be in force and effect from and after its passage."

RESEARCH REFERENCES

A.L.R. Newspaper of general circulation, what constitutes within meaning of state statutes requiring publication of official notices and the like in such newspaper. 24 A.L.R.4th 822.

Am. Jur. 58 Am. Jur. 2d, Newsp., § 5 et seq.

C.J.S. 66 C.J.S., Newsp., § 3 et seq.

1-3-101. Penalty.

Every person who shall fail to comply with the provisions of §§ 1-3-103 and 1-3-105 — 1-3-108 shall be fined in any sum not exceeding one thousand dollars (\$1,000).

History. Init. Meas. 1914, No. 2, § 13, Acts 1915, p. 1511; Pope's Dig., § 8801; A.S.A. 1947, § 15-212.

Publisher's Notes. Acts 1917, No. 471, p. 2172, provided: "That Act No. 3 [2], known as the Publicity Act, initiated and adopted by the people at the general election held in September, 1914, be and the same is hereby repealed; provided, that this Act shall not go into effect until the next general election, when the same shall be submitted to the voters of each county

for ratification or rejection; that at the next general election held for the election of State and county officers, there shall be printed on the ballot the words, 'For Act No. 3' [2] and 'Against Act No. 3,' [2] and in any county in which the majority of the voters voting on such question vote against Act No. 3 [2], then in such county said Act shall be repealed, and this Act shall be in full force and effect." The results of the election are not known.

CASE NOTES

Cited: Clark v. Hambleton, 235 Ark. 467, 360 S.W.2d 486 (1962).

1-3-102. [Repealed.]

Publisher's Notes. This section, requiring the Secretary of State to print a synopsis of general laws, was repealed by Acts 1997, No. 256, § 1. The section was

derived from Init. Meas. 1914, No. 2, § 2; Acts 1915, No. 104, § 2; Pope's Dig., § 8790; A.S.A. 1947, § 15-201.

1-3-103. Orders of Public Service Commission and Transportation Commission.

The respective secretaries of the Arkansas Public Service Commission and the Transportation Commission shall cause to be published one (1) time, in one (1) newspaper in each county in this state, all general orders of the respective commissions.

History. Init. Meas. 1914, No. 2, § 3, Acts 1915, p. 1511; Pope's Dig., § 8791; A.S.A. 1947, § 15-202.

Publisher's Notes. The Arkansas Transportation Commission was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No.

572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23 and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the State Highway and Transportation Department, respectively.

1-3-104. [Repealed.]

Publisher's Notes. This section, concerning a summary of assessment proceedings, was repealed by Acts 2005, No. 27, § 1. The section was derived from Init.

Meas. 1914, No. 2, § 4, Acts 1915, p. 1511; Pope's Dig., § 8792; A.S.A. 1947, § 15-203.

1-3-105. Report of commissioners of special improvement districts.

All annual reports of the commissioners of special improvement districts shall be published one (1) time in one (1) newspaper published in the municipality in which the district exists.

History. Init. Meas. 1914, No. 2, § 8, Acts 1915, p. 1511; Pope's Dig., § 8796; A.S.A. 1947, § 15-207.

1-3-106. Newspapers eligible to publish notices.

In all counties in which there are cities of the first class, the publication provided for in this chapter may be made in one (1) daily newspaper of general circulation or in one (1) or more weekly newspapers of general circulation in the county.

History. Init. Meas. 1914, No. 2, § 12, Acts 1915, p. 1511; 1933, No. 239, § 1; Pope's Dig., § 8800; A.S.A. 1947, § 15-211.

CASE NOTES

Cited: Smackover Journal v. News Times Publishing Co., 185 Ark. 523, 48 S.W.2d 219 (1932).

1-3-107. Fees for publishing notices.

(a) The fees allowed for the publications provided in this chapter shall not exceed one-half (½) of the legal rate provided by law for the publication of legal notices except in the case of a newspaper having a sworn circulation of more than five thousand (5,000) when full legal rates shall be paid.

(b)(1) All accounts for publication required by § 1-3-102 [repealed] shall be paid by the state.

(2) All accounts under § 1-3-103 shall be paid by the state when approved by the Arkansas Public Service Commission or the Arkansas Transportation Commission, as appropriate.

(3) All accounts for publications required by § 1-3-104 shall be paid by the county in which the publications are made, when the publications are approved by the county court, and the respective levying courts are authorized to make appropriation for that purpose.

(4) All accounts for publications under § 1-3-105 shall be paid by the improvement districts making the publications when the publications have been approved by the commissioners of the districts.

History. Init. Meas. 1914, No. 2, § 9, Acts 1915, p. 1511; Pope's Dig., § 8797; A.S.A. 1947, § 15-208.

Publisher's Notes. The Arkansas Transportation Commission was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No.

572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23 and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the State Highway and Transportation Department, respectively.

1-3-108. Publications in more than one newspaper.

The officials who are required by this chapter to cause publications to be made may cause them to be made in more than one (1) newspaper when it is possible to secure more general publicity without additional expense.

History. Init. Meas. 1914, No. 2, § 11, Acts 1915, p. 1511; Pope's Dig., § 8799; A.S.A. 1947, § 15-210.

1-3-109. Printing of publication cost.

(a) All newspapers publishing anything under the provisions of §§ 1-3-101, 1-3-103, and 1-3-105 — 1-3-109 shall print free of charge at the head of each of the publications, in type of double the size of the publication itself, the following words: "The cost of this publication to the taxpayers is the sum of _____ dollars."

(b) Any newspaper or proprietor or editor of any newspaper failing to comply with this section shall be guilty of a violation and upon conviction shall be fined in any sum not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500).

History. Acts 1915, No. 83, §§ 1, 2; A.S.A. 1947, § 15-201n; Acts 2005, No. 1994, § 1.

Amendments. The 2005 amendment substituted "violation" for "misdemeanor" in (b).

CHAPTER 4

STATE SYMBOLS, MOTTO, ETC.

SECTION.

- 1-4-101. State flag.
- 1-4-102. Salute to state flag.
- 1-4-103. Lowering of flags upon death of public officials.
- 1-4-104. Distribution of flags.
- 1-4-105. Pronunciation of state name.
- 1-4-106. State nickname.
- 1-4-107. State motto.
- 1-4-108. Official seals.
- 1-4-109. State flower.
- 1-4-110. State insect.
- 1-4-111. State gem, mineral, and rock.
- 1-4-112. State beverage.
- 1-4-113. State musical instrument.

SECTION.

- 1-4-114. Poet laureate.
- 1-4-115. State fruit and vegetable.
- 1-4-116. State songs and anthem.
- 1-4-117. Official language.
- 1-4-118. State bird.
- 1-4-119. State tree.
- 1-4-120. State folk dance.
- 1-4-121. Purple martin capitals.
- 1-4-122. State mammal.
- 1-4-123. Trout capital of the U.S.A.
- 1-4-124. State soil.
- 1-4-125. State historic cooking vessel.
- 1-4-126. State butterfly.
- 1-4-127. State grain.

Preambles. Acts 1973, No. 49 contained a preamble which read: "Whereas, the honeybee is a diligent and willing worker and in this respect typifies the outstanding citizens of the State of Arkansas; and

"Whereas, honeybees are extremely productive and demonstrate an unusual degree of conservation in carrying out their highly complicated purpose and duties; and

"Whereas, honeybees are outstanding keepers of their home and are willing to defend their homes against all intruders; and

"Whereas, without honeybees, pollination of our agricultural crops would be severely reduced and the resulting reduction in agricultural production could result in a substantial shortage of food products; and

"Whereas, there has been no official designation of a state insect for the State of Arkansas"

Acts 1985, No. 277 contained a preamble which read: "Whereas, the fiddle, otherwise known as the violin, is generally accepted as the musical instrument that is most commonly associated with the musical education and entertainment of the pioneer families of Arkansas; and

"Whereas, the fiddle continues as a dominant musical instrument in the culture, education and family entertainment of the people of Arkansas; and

"Whereas, the fiddle has encouraged native craftsmanship and a unique Arkansas philosophy."

Acts 1985, No. 998 contained a preamble which read: "Whereas, the State of Arkansas has enjoyed the benefits of fresh wholesome milk for decades; and

"Whereas, dairy farming is a very important part of our Arkansas agricultural community; and

"Whereas, the State of Arkansas has relied on its dedicated dairy farmers to supply our citizens with nature's most nearly perfect food; and

"Whereas, the citizens of Arkansas should be encouraged to drink milk every day as a nutritious food"

Acts 1991, No. 93 contained a preamble which read:

"Whereas, love of state and professions is enhanced by traditions that have become a part of our way of life and the customs of the American people; and

"Whereas, we have distinctive and meaningful symbols of our ideals in our state's flag and in many cultural endeavors, but no official designation of a State Folk Dance; and

"Whereas, the square dance, which was first associated with the American people and recorded in history since 1651, has consistently been the one dance traditionally recognized by the American people as a dignified and enjoyable expression of American folk dancing; and

"Whereas, square dancing is a traditional form of family recreation which symbolizes a basic strength of this country, namely the unity of family; and

"Whereas, square dancing is an activity for young and old, where senior citizens enjoy dance and fellowship and where disabled persons become skilled, happy and "handicapable" dancers; and

"Whereas, square dancing is the American folk dance which is called, cued, or prompted to the dancers, and includes squares, rounds, clogging, contra, line, and heritage dances; and

"Whereas, official recognition of the square dance will enhance the cultural stature of Arkansas both nationally and internationally; and

"Whereas, national and international prestige is the best interest of all Americans; and

"Whereas, it is fitting that the square dance be added to the array of symbols of our state character and pride,

"Now Therefore, ... "

Acts 1997, No. 890 contained a preamble which read: "Whereas a growing number of states of the United States, having significant concerns for soil, have by legislative enactment chosen a locally unique soil series as their official state soil; and

"Whereas, the State of Arkansas has significant concern for its soil resources and takes pride in its designation as the Natural State; and

"Whereas, soils enhance the quality of surface and ground water and serve as the foundation for our bountiful agriculture, our forests and pasturelands, our unique wildlife habitats, our beautiful landscapes, and the homes and communities of our citizens; and

"Whereas, the Stuttgart soil series (member of a soil family of fine, smectitic, thermic Albaquultic Hapludalfs) covers nearly 200,000 acres in Arkansas, is vitally important economically and ecologically to the well being of all Arkansans, and is unique to the State of Arkansas; and"

"Whereas, the State of Arkansas has yet to designate a state soil."

Acts 2001, No. 476 contained a preamble which read: "Whereas, Dutch ovens were used in 1803 when Arkansas was a part of the Louisiana Purchase area; and

"Whereas, Dutch ovens were in use in 1836 when Arkansas became one of the United States of America; and

"Whereas, Dutch ovens have served as cooking vessels and bake kettles on hearths and camping sites of settlers in the State of Arkansas; and

"Whereas, Dutch ovens continue to be used by outdoorsmen and campers at this time;

"Be it enacted by the General Assembly of the State of Arkansas:"

Effective Dates. Acts 1907, No. 395, § 2: effective on passage.

Acts 1967, No. 128, § 4: Feb. 22, 1967. Emergency clause provided: "It is hereby found and determined by the General Assembly that there is presently no officially designated State Gem, State Mineral or State Rock, for the State of Arkansas; that there are many clubs and individuals throughout the United States that collect, trade, and sell official State Gems, Minerals and Rocks, and thus it is essential that the General Assembly immediately designate a State Gem, Mineral and Rock, in order that the various interested clubs and individuals in Arkansas can trade official State Gems, Minerals and Rocks, with like clubs and individuals in other States. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety, shall be in effect from the date of its passage and approval."

Acts 1971, No. 90, § 3: Feb. 15, 1971. Emergency clause provided: "It is hereby found and determined by the General Assembly that procedures do not now exist for the recognition and designation of a Poet Laureate for the State of Arkansas, and that the immediate passage of this Act is necessary in order to enable the Governor of the State of Arkansas to grant appropriate recognition for outstanding accomplishments in poetry to a deserving and qualified resident of this State by designating a Poet Laureate. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1985, No. 414, § 3: Mar. 19, 1985. Emergency clause provided: "It is hereby found and determined by the Regular Session of the Seventy-Fifth General Assem-

bly that pride in and respect for the flags of the United States of America and of the State of Arkansas is gained by the honor of civic groups, schools, and organized youth groups obtaining flags that have been flown over the State Capitol Building, and that the furnishing of flags flown over the State Capitol Building to members of the General Assembly will enable the House and Senate members and the Governor to distribute such flags in an appropriate manner to civic groups, schools, and youth organizations in the various communities of this State, and that the immediate passage of this Act is necessary to enable the Secretary of State to acquire a sufficient supply of such flags to be flown over the State Capitol Building for distribution to the members of the General Assembly and the Governor to accomplish the purposes intended by this Act. Therefore, an emergency is hereby declared to exist and this Act, being immediately necessary for the preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 1989 (1st Ex. Sess.), No. 123, § 21: July 1, 1989. Emergency clause provided: "It is hereby found and determined by the Seventy-Seventh General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1989 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1989 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1989."

Acts 1993, No. 469, § 5: Mar. 12, 1993. Emergency clause provided: "It is hereby found and determined by the Seventy-Ninth General Assembly of the State of Arkansas that the purple martin is a bird known for its hearty appetite for mosquitoes and other flying insects and is deemed an attractive asset because of its appearance, song, cleanliness, and diet, and that the city of Lake Village in southeastern Arkansas is located along the North-South Flyway where millions of birds migrate annually, and that designating the city of Lake Village as the Southeast Purple Martin Capital of Arkansas will economically benefit the area by attracting tourists to the area and by gaining it recognition as a prime birding hotspot. Therefore, in order to economically aid the city of Lake Village, an emergency is hereby declared to exist, and this act being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 2003, No. 300, § 2: became law without the Governor's signature. Noted Mar. 5, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that there currently is an inadequate supply of flags for members of the General Assembly; that the members are receiving requests for flags from schools, community groups, and other constituencies, and are unable to fill those requests; and that this act is immediately necessary in order to alleviate that situation. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

1-4-101. State flag.

(a) The official state flag shall be a rectangle of red on which is placed a large white diamond, bordered by a wide band of blue on which are twenty-five (25) white stars. Across the diamond shall be the word

"ARKANSAS" and four (4) blue stars, with one (1) star above and three (3) stars below the word "ARKANSAS". The star above the word "ARKANSAS" shall be below the upper corner of the diamond. The three (3) stars below the word "ARKANSAS" shall be placed so that one (1) star shall be above the lower corner of the diamond and two (2) stars shall be placed symmetrically, parallel above and to the right and left of the star in the lower corner of the diamond.

(b) The three (3) stars so placed are designed to represent the three (3) nations, France, Spain, and the United States, which have successively exercised dominion over Arkansas. These stars also indicate that Arkansas was the third state carved out of the Louisiana Purchase. Of these three (3) stars, the twin stars parallel with each other signify that Arkansas and Michigan are twin states, having been admitted to the Union together on June 15, 1836. The twenty-five (25) white stars on the band of blue show that Arkansas was the twenty-fifth state admitted to the Union. The blue star above the word "ARKANSAS" is to commemorate the Confederate States of America. The diamond signifies that this state is the only diamond-bearing state in the Union.

History. Acts 1987, No. 116, § 1.

A.C.R.C. Notes. Former § 1-4-101, which concerned the state flag, is deemed to be superseded by this section. The former section was derived from the following sources: Senate Concurrent Resolution No. 11, Acts 1913, p. 1508; House

Concurrent Resolution No. 4, Acts 1923, p. 815; House Concurrent Resolution No. 11, Acts 1924 (2nd Ex. Sess.), p. 27; A.S.A. 1947, § 5-107.

Cross References. Contempt for or desecration of the Arkansas flag, § 5-51-208.

1-4-102. Salute to state flag.

The following is adopted as the official salute to the Arkansas Flag: "I salute the Arkansas Flag with its diamond and stars. We pledge our loyalty to thee."

History. House Concurrent Resolution No. 23, Acts 1953, p. 1510; A.S.A. 1947, § 5-108.

1-4-103. Lowering of flags upon death of public officials.

(a) It shall be the policy of the State of Arkansas to honor and pay tribute to certain public officials by lowering the state flags located on public buildings and other public property to half-mast from the time notice of the official's death is received through the day on which funeral services are conducted for the deceased official.

(b) This section shall apply with respect to the following officers:

- (1) Current and past members of the United States Congress from the State of Arkansas;
- (2) Current constitutional officers of the State of Arkansas;
- (3) Former Governors of the State of Arkansas;
- (4) Current members of the Arkansas General Assembly; and
- (5) Current members of the Arkansas Supreme Court.

(c) The provisions of this section shall not interfere with or restrict the authority of the Governor to order the state flag lowered to half-mast by executive proclamation at times other than those mentioned in this section.

History. Acts 1977, No. 534, §§ 1-3; A.S.A. 1947, §§ 5-108.1 — 5-108.3.

1-4-104. Distribution of flags.

(a) The Secretary of State is authorized and directed to obtain a sufficient quantity of flags of the United States and of the State of Arkansas in order that the flags that have been flown over the State Capitol Building may be made available to members of the House of Representatives and Senate and to the Governor for distribution to civic groups, schools, and organized youth groups in their respective areas.

(b) A sufficient quantity of flags shall be obtained to permit the Secretary of State to make available for distribution in the manner authorized in this section:

(1) Fifteen (15) Arkansas flags and ten (10) United States flags per calendar year to each member of the House of Representatives and the Senate;

(2) One hundred (100) flags per calendar year, which may be either Arkansas flags or United States flags as indicated by the Governor, to the Governor; and

(3) Twenty-five (25) Arkansas flags and twenty-five (25) United States flags per calendar year to:

(A) The office of the Speaker of the House of Representatives;

(B) The office of the President Pro Tempore of the Senate;

(C) The Lieutenant Governor;

(D) The Secretary of State;

(E) The Treasurer of State;

(F) The Auditor of State; and

(G) The Commissioner of State Lands.

(c) The provisions of this section shall be in lieu of any other law of this state which provides for the Secretary of State to furnish copies of flags for distribution to civic groups, schools, and organized youth groups.

History. Acts 1985, No. 414, §§ 1, 2; A.S.A. 1947, §§ 5-120, 5-121; Acts 1989 (1st Ex. Sess.), No. 123, § 14; 2003, No. 300, § 1.

Publisher's Notes. Acts 2003, No. 300

became law without the Governor's signature.

Amendments. The 2003 amendment rewrote (b).

1-4-105. Pronunciation of state name.

Whereas, confusion of practice has arisen in the pronunciation of the name of our state and it is deemed important that the true pronunciation should be determined for use in oral official proceedings.

And, whereas, the matter has been thoroughly investigated by the State Historical Society and the Eclectic Society of Little Rock, which have agreed upon the correct pronunciation as derived from history and the early usage of the American immigrants.

Be it therefore resolved by both houses of the General Assembly, that the only true pronunciation of the name of the state, in the opinion of this body, is that received by the French from the native Indians and committed to writing in the French word representing the sound. It should be pronounced in three (3) syllables, with the final "s" silent, the "a" in each syllable with the Italian sound, and the accent on the first and last syllables. The pronunciation with the accent on the second syllable with the sound of "a" in "man" and the sounding of the terminal "s" is an innovation to be discouraged.

History. Concurrent Resolution No. 4, Pope's Dig., § 11867; A.S.A. 1947, § 5-Acts 1881, p. 216; C. & M. Dig., § 9181a; 102.

1-4-106. State nickname.

Because of our unsurpassed scenery, clear lakes, free-flowing streams, magnificent rivers, meandering bayous, delta bottomlands, forested mountains, and abundant fish and wildlife, the official nickname for the State of Arkansas is proclaimed to be "The Natural State".

History. House Concurrent Resolution No. 26, Acts 1953, p. 1511; A.S.A. 1947, § 5-110; Acts 1995, No. 1352, § 1.	Publisher's Notes. Acts 1995, No. 1352 became law without the Governor's signature.
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1-4-107. State motto.

The motto of the State of Arkansas shall be "Regnat Populus".

History. Acts 1907, No. 395, § 1, p. 987; C. & M. Dig., § 9181; Pope's Dig., § 11866; A.S.A. 1947, § 5-103.

1-4-108. Official seals.

(a) It shall be the duty of the Governor to procure a seal for the State of Arkansas, which shall present the following impressions, devices, and emblems, to wit: An eagle at the bottom, holding a scroll in its beak, inscribed "Regnat Populus", a bundle of arrows in one claw and an olive branch in the other; a shield covering the breast of the eagle, engraved with a steamboat at top, a beehive and plow in the middle, and sheaf of wheat at the bottom; the Goddess of Liberty at the top, holding a wreath in her right hand, a pole in the left hand, surmounted by a liberty cap, and surrounded by a circle of stars outside of which is a circle of rays; the figure of an angel on the left, inscribed "Mercy", and a sword on the right hand, inscribed "Justice", surrounded with the words "Seal of the State of Arkansas".

(b) The Secretary of State, Auditor of State, and Treasurer of State shall each have a seal of office presenting the impressions, devices, and emblems presented by the Seal of State except that the surrounding words on the Secretary of State's seal shall be "Seal of the Secretary of State, Arkansas", on the Auditor of State's seal shall be "Seal of the Auditor of State, Arkansas", and on the Treasurer of State's seal shall be "Seal of the Treasurer of State, Arkansas".

(c) All official seals used in the state shall present the same impressions, emblems, and devices presented by the Seal of State, except that the surrounding words shall be such as to indicate the office to which each seal belongs.

History. Acts 1864, No. 1, §§ 1-3, p. 31; C. & M. Dig., §§ 2096, 9142-9144; Pope's Dig., §§ 2700, 11804-11806; A.S.A. 1947, §§ 5-104 — 5-106.

Cross References. Governor to keep seal, Ark. Const., Art. 6, § 9.

Seal of state continued, Ark. Const., Art. 19, § 25.

1-4-109. State flower.

The apple blossom is declared to be the state floral emblem of Arkansas.

History. Senate Concurrent Resolution No. 1, Acts 1901, p. 408; A.S.A. 1947, § 5-109.

1-4-110. State insect.

The honeybee is designated as the official state insect for the State of Arkansas.

History. Acts 1973, No. 49, § 1; A.S.A. 1947, § 5-118.

1-4-111. State gem, mineral, and rock.

(a) The diamond is adopted and designated the official state gem of the State of Arkansas.

(b) Quartz crystal is adopted and designated the official state mineral of the State of Arkansas.

(c) Bauxite is adopted and designated the official state rock of the State of Arkansas.

History. Acts 1967, No. 128, §§ 1-3; A.S.A. 1947, §§ 5-115 — 5-117.

1-4-112. State beverage.

Milk is designated as the state beverage of Arkansas.

History. Acts 1985, No. 998, § 1; A.S.A. 1947, § 5-127.

1-4-113. State musical instrument.

The fiddle is designated the official musical instrument of the State of Arkansas.

History. Acts 1985, No. 277, § 1; A.S.A. 1947, § 5-119.

1-4-114. Poet laureate.

(a) The Governor is authorized to designate or appoint, by proclamation, a Poet Laureate of the State of Arkansas, which shall be an honorary title in recognition of outstanding accomplishments and contributions in poetry by a person who is a resident of the State of Arkansas.

(b) The person designated or appointed by the Governor as Poet Laureate of the State of Arkansas shall be a person whose name was selected from a list of names submitted to the Governor upon recommendation of a committee consisting of the principal heads of the English departments of all state-supported universities and colleges.

History. Acts 1971, No. 90, § 1; A.S.A. 1947, § 5-111.1.

1-4-115. State fruit and vegetable.

It is found and determined by the General Assembly that the South Arkansas Vine Ripe Pink Tomato has a taste, texture, appearance, and aroma second to none and that the tomato is botanically a fruit and used as a vegetable. It is further determined by the General Assembly that Arkansas does not have a state fruit or a state vegetable. Therefore, the South Arkansas Vine Ripe Pink Tomato shall be the official state fruit and the official state vegetable.

History. Acts 1987, No. 255, § 1.

1-4-116. State songs and anthem.

(a)(1) The songs "Arkansas (You Run Deep in Me)" and "Oh, Arkansas" shall each be designated and known as the official state song.

(2) The song "Arkansas", written in 1916 by Mrs. Eva Ware Barnett, shall be known and designated as Arkansas' official state anthem.

(3) The song "The Arkansas Traveler", as composed and approved by the State Song Commission in 1949 as the official state song, is adopted and designated as Arkansas' official historical song. However, this designation shall not modify or affect the use of any song designated as the official song or anthem of this state if that designation has been appropriately adopted by an act or concurrent resolution of the General Assembly.

(b) Recognizing that Arkansas has two (2) state songs, one (1) state anthem, and one (1) historical state song, the Secretary of State shall

respond to requests for a copy of the Arkansas state song by furnishing copies of "Arkansas", written by Mrs. Eva Ware Barnett.

History. Acts 1987, No. 850, § 1; House Concurrent Resolution No. 1003, Acts 1987; House Concurrent Resolution No. 1007, Acts 1987.

A.C.R.C. Notes. As enacted, subdivision (a)(1) of the section provided that in order for the songs "Arkansas (You Run

Deep in Me)" and "Oh, Arkansas" to be designated as the official state song, the lyricists of the songs must file with the Secretary of State, by May 12, 1987, written consent for the use of each song as the state's official state song. Such consents were timely filed.

1-4-117. Official language.

(a) The English language shall be the official language of the State of Arkansas.

(b) This section shall not prohibit the public schools from performing their duty to provide equal educational opportunities to all children.

History. Acts 1987, No. 40, § 1; 1987, No. 77, § 1.

1-4-118. State bird.

The mockingbird is declared and everywhere recognized as the state bird of the State of Arkansas.

History. House Concurrent Resolution No. 22, Acts 1929.

1-4-119. State tree.

The pine tree is declared and everywhere recognized as the state tree of the State of Arkansas.

History. House Concurrent Resolution No. 2, Acts 1939.

1-4-120. State folk dance.

The dance known as the square dance is hereby designated and adopted as the American Folk Dance of the State of Arkansas.

History. Acts 1991, No. 93, § 1.

1-4-121. Purple martin capitals.

(a) Since the purple martin, a bird known for its appetite for flying insects, is deemed by most as an attractive asset for its appearance, song, cleanliness, and diet — America's Most Wanted Bird, and since the City of Lake Village in Chicot County of southeastern Arkansas is located along the North-South Flyway, the major migration route for millions of birds, the City of Lake Village in Chicot County, shall be designated by the General Assembly to be known as the "Southeast Purple Martin Capital of the State of Arkansas".

(b) The City of Fort Smith is hereby designated as the "Northwest Purple Martin Capital of Arkansas".

History. Acts 1993, No. 469, § 1; 1993, No. 871, § 1.

1-4-122. State mammal.

The white-tailed deer is hereby designated the official mammal of the State of Arkansas.

History. Acts 1993, No. 892, § 1.

1-4-123. Trout capital of the U.S.A.

The City of Cotter, Arkansas, shall hereafter be known and may be referred to as the "Trout Capital of the U.S.A".

History. Acts 1993, No. 740, § 1.

1-4-124. State soil.

The Stuttgart soil series, member of a soil family of fine, smectitic, thermic albaquultic hapludalfs, is designated and declared as the official Arkansas state soil.

History. Acts 1997, No. 890, § 1.

1-4-125. State historic cooking vessel.

The Dutch oven is designated as the official historic cooking vessel of the State of Arkansas.

History. Acts 2001, No. 476, § 1.

1-4-126. State butterfly.

The Diana fritillary butterfly is designated the official butterfly of the State of Arkansas.

History. Acts 2007, No. 156, § 1.

A.C.R.C. Notes. Acts 2007, No. 156, § 2, provided: "Nothing in this act shall be construed to require a state agency or office to republish any publication or brochure in order to list or display the state butterfly. A state agency or office may

include the information in future publications or brochures or in any scheduled update to a publication or brochure."

Acts 2007, No. 156, § 3, provided: "This act shall not grant a protected status to the Diana fritillary butterfly."

1-4-127. State grain.

Rice is designated the official grain of the State of Arkansas.

History. Acts 2007, No. 513, § 1.

A.C.R.C. Notes. Acts 2007, No. 513, § 2, provided: "Nothing in this act shall be

construed to require a state agency or office to republish any publication or brochure in order to list or display the state

grain. A state agency or office may include the information in future publications or

brochures or in any scheduled update to a publication or brochure."

CHAPTER 5

HOLIDAYS AND OBSERVANCES

SECTION.

- 1-5-101. Official holidays.
- 1-5-102. State offices to be closed on holidays — Exceptions.
- 1-5-103. State office closings by proclamation.
- 1-5-104. Entitlement to paid holiday or equivalent time.
- 1-5-105. Commercial paper payable day after holiday.
- 1-5-106. Memorial days generally.
- 1-5-107. Confederate Flag Day.

SECTION.

- 1-5-108. White Cane Safety Day.
- 1-5-109. Prisoners of War Remembrance Day.
- 1-5-110. National Garden Week.
- 1-5-111. Arkansas Agriculture Recognition Day.
- 1-5-112. POW/MIA Recognition Day.
- 1-5-113. Native American Heritage Week.
- 1-5-114. Juneteenth Independence Day.
- 1-5-115. Firefighter Recognition Day.
- 1-5-116. Hemophilia Awareness Day.

Cross References. Bonds in actions may be dated on holiday, § 16-58-106.

Process may be issued on holiday, § 16-58-106.

Preambles. Acts 1973, No. 7 contained a preamble which read: "Whereas, birds have always played an important part in Arkansas, past and present, recreationally, aesthetically, and ecologically; and

"Whereas, it is important to this and future generations that the people of this State recognize the importance of positive, definitive, and continuing efforts to preserve the ecology of the State; and

"Whereas, John James Audubon was one of the earliest to record North American birds in their natural habitat; and

"Now, Therefore"

Effective Dates. Acts 1969, No. 16, § 2: Jan. 1, 1971.

Acts 1975, No. 976, § 9: Apr. 9, 1975. Emergency clause provided: "It is hereby found and determined by the General Assembly that there is an urgent need to establish a more clearly defined designation of certain legal holidays in order to protect the public health, safety and welfare and the immediate passage of this Act

is necessary to accomplish this purpose; therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1979, No. 385, § 3: Mar. 12, 1979. Emergency clause provided: "It is hereby found and determined by the General Assembly that under present Arkansas law, the second Tuesday in March is designated as 'Arkansas Teachers Day'; that the date for commemorating Arkansas teachers should be changed to the first Tuesday in March to coincide with similar days of commemoration in other states, and that this Act should be given effect immediately in order that the date of 'Arkansas Teachers Day' will officially be designated the first Tuesday in March for the year 1979 and thereafter. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

RESEARCH REFERENCES

Am. Jur. 73 Am. Jur. 2d, Sun. & H., § 1 et seq.

C.J.S. 40 C.J.S., Holidays, § 1 et seq.

1-5-101. Official holidays.

(a) The following days are declared to be the sole official holidays applicable to state government in Arkansas:

- (1) New Year's Day — January 1;
- (2) Dr. Martin Luther King, Jr.'s Birthday and Robert E. Lee's Birthday — the third Monday in January;
- (3) George Washington's Birthday and Daisy Gatson Bates Day — the third Monday in February;
- (4) Memorial Day — the last Monday in May;
- (5) Independence Day — July 4;
- (6) Labor Day — the first Monday in September;
- (7) Veterans Day — November 11;
- (8) Thanksgiving Day — the fourth Thursday in November;
- (9) Christmas Eve — December 24;
- (10) Christmas Day — December 25; and
- (11) An employee's birthday — an employee is granted one (1) holiday to observe his or her birthday.

(b) A holiday falling on a Saturday will be observed on the preceding Friday. A holiday falling on a Sunday will be observed on the succeeding Monday.

(c) It is the specific intent of the General Assembly that all state employees shall be entitled to eleven (11) paid holidays per year. The Office of Personnel Management of the Department of Finance and Administration shall promulgate rules and regulations to assure this legislative intent.

History. Acts 1943, No. 211, § 1; 1947, §§ 1, 3, 6; 1983, No. 833, § 1; 1985, No. 215, § 1; 1955, No. 29, § 1; 1963, No. 985, § 1; A.S.A. 1947, §§ 69-101, 216, § 1; 1969, No. 16, § 1; 1971, No. 370, 69-101.1, 69-115; Acts 2001, No. 304, § 1. § 1; 1973, No. 664, § 1; 1975, No. 976,

CASE NOTES

Cited: *Ouachita Indus., Inc. v. Anderson*, 236 Ark. 929, 370 S.W.2d 811 (1963); *S.W.2d 410* (1970); *Ft. Smith v. Brewer*, 255 Ark. 813, 502 S.W.2d 643 (1973).
Deason v. Rogers, 247 Ark. 1061, 449

1-5-102. State offices to be closed on holidays — Exceptions.

(a) All state offices shall be closed on all days declared to be legal holidays under the laws of this state, and all persons employed thereby shall not be required to work on legal holidays. However, this section shall not apply to those state government offices wherever located and to those employees that are essential to the preservation and protection of the public peace, health, and safety, nor to the offices of the various constitutional officers who may use their own discretion in the matter of closing their offices on legal holidays.

(b) It is the specific intent of this section that all state offices be closed on all legal holidays even though one (1) or more legal holidays shall fall during a general or special session of the General Assembly,

provided that, with respect to state offices located in Pulaski County, those offices shall not be closed for any legal holiday during any general or special session of the General Assembly unless they are permitted to close by resolution of the General Assembly, but those offices shall maintain only a minimum number of employees necessary to carry on the business of the offices.

(c) Any state employee who is required to work on a legal holiday, for any reason, shall be entitled to equivalent time off at a later date.

(d) Notwithstanding the provisions of subsection (a) of this section, state-supported institutions of higher learning in this state may require the employees of the institutions to work on any of the holidays established in § 1-5-101, but if the employees are required to work on any day declared as a legal holiday, the employees shall be entitled to equivalent time off on another date.

History. Acts 1971, No. 370, §§ 2, 3; 1975, No. 976, §§ 2, 4; A.S.A. 1947, §§ 69-112, 69-113.

A.C.R.C. Notes. Section 10-2-128 provides that, for the observance of the Dr.

Martin Luther King, Jr. holiday, the House of Representatives, the Senate, and their committees shall not convene in session or meet on the third Monday in January.

1-5-103. State office closings by proclamation.

Nothing in §§ 1-5-101, 1-5-102, and 1-5-104 shall be construed as prohibiting the Governor from establishing by executive proclamation additional days when state offices shall be closed in observance of special events, or for other reasons at his or her discretion.

History. Acts 1975, No. 976, § 5; A.S.A. 1947, § 69-112.1.

CASE NOTES

Cited: *Sloss v. Farmers Bank & Trust Co.*, 290 Ark. 304, 722 S.W.2d 598 (1987).

1-5-104. Entitlement to paid holiday or equivalent time.

(a) To be eligible for holiday pay, the employee must be on pay status his or her last scheduled work day before the holiday and his or her first scheduled work day after the holiday.

(b) When a holiday falls while an employee is on annual or sick leave, that day is charged as a holiday and that day will not be charged against his or her annual or sick leave.

(c) When a holiday falls on an employee's regular scheduled day off, he or she will be given equivalent time off.

(d) The following provisions apply to employees who cannot take holidays as scheduled:

(1) Employees must work on holidays when the needs of the agency require it. Department or agency directors will determine the need;

(2) Days off for holidays worked may be taken at a time approved by the employee's supervisor. They are to be taken as soon as it is practical;

(3) Supervisors are responsible for scheduling days off in lieu of holidays for their employees. Department heads and supervisors are responsible for informing their employees of the schedule and the observance of all provisions.

History. Acts 1975, No. 976, § 3; A.S.A. 1947, § 69-115.

1-5-105. Commercial paper payable day after holiday.

All bills of exchange, drafts, or promissory notes which shall become payable on a legal holiday shall be payable on the day next succeeding the holiday.

History. Acts 1943, No. 211, § 3; A.S.A. 1947, § 69-103. may be done on day following holiday, § 23-48-103.

Cross References. Banking business

CASE NOTES

Cited: Michelsen v. Patterson, 9 Ark. App. 275, 658 S.W.2d 413 (1983).

1-5-106. Memorial days generally.

The following days shall not be legal holidays but shall be memorial days to be commemorated by the issuance of appropriate proclamations by the Governor:

- (1) General Douglas MacArthur Day — January 26;
- (2) Silas Hunt Day — February 2;
- (3) Abraham Lincoln's Birthday — February 12;
- (4) Arkansas Teachers' Day — First Tuesday in March;
- (5) Arbor Day — Third Monday in March;
- (6) Patriots' Day — April 19;
- (7) Arkansas Bird Day — April 26;
- (8) Good Friday — Friday preceding Easter;
- (9) Jefferson Davis' Birthday — June 3;
- (10) Columbus Day — October 12; and
- (11) Senator Hattie W. Caraway Day — December 19.

History. Acts 1943, No. 211, § 2; 1947, No. 215, § 2; 1967, No. 500, § 1; 1973, No. 7, § 1; 1975, No. 291, § 1; 1977, No. 372, § 1; 1977, No. 538, § 1; 1979, No. 385, § 1; A.S.A. 1947, §§ 69-102, 69-114, 69-116; Acts 2001, No. 1218, § 1; 2007, No. 374, § 1.

Amendments. The 2007 amendment added (2) and redesignated the remaining subsections accordingly.

1-5-107. Confederate Flag Day.

The Saturday immediately preceding Easter Sunday of each year is designated as “Confederate Flag Day” in this state.

History. Acts 1957, No. 124, § 1; 1967, No. 455, §§ 1, 2; A.S.A. 1947, §§ 69-110, 69-111; Acts 2005, No. 1994, § 490. **Amendments.** The 2005 amendment deleted former (b) and (c) and made a related change.

1-5-108. White Cane Safety Day.

(a) October 15 of each year is declared to be “White Cane Safety Day”.

(b) The Governor shall annually prior to October 15 issue a proclamation proclaiming October 15 as “White Cane Safety Day” and in the proclamation shall:

(1) Comment upon the significance of the white cane;
(2) Call upon the citizens of the state to observe the provisions of § 20-14-301 et seq. and to take precautions necessary to the safety of the visually impaired, hearing impaired, and other persons with physical disabilities;

(3) Remind the citizens of the state of the policies of the state with respect to the visually impaired, hearing impaired, and other persons with physical disabilities, as prescribed by § 20-14-301 et seq., and urge the citizens to cooperate in carrying out those policies; and

(4) Emphasize the need for the citizens of this state to:

(A) Be aware of the presence of the visually impaired, hearing impaired, and other persons with physical disabilities in the community;

(B) Keep safe and functional for the visually impaired, hearing impaired, and other persons with physical disabilities the:

- (i) Streets;
- (ii) Highways;
- (iii) Sidewalks;
- (iv) Walkways;
- (v) Public buildings;
- (vi) Public facilities;
- (vii) Other public places;
- (viii) Places of public accommodation, amusement, and resort; and
- (ix) Other places to which the public is invited; and

(C) Offer assistance to the visually impaired, hearing impaired, and other persons with physical disabilities upon appropriate occasions.

History. Acts 1973, No. 484, § 7; 1979, No. 574, § 1; A.S.A. 1947, § 82-2907; Acts 1997, No. 208, § 2; 2001, No. 1553, § 1.

A.C.R.C. Notes. Section 22-4-408, derived from Acts 1997, No. 208, § 1, provides: “The General Assembly hereby acknowledges that many of the laws relating

to individuals with disabilities are antiquated, functionally outmoded, derogatory, and ambiguous or are inconsistent with more recently enacted provisions of the law. Consequently, it is the intent of the General Assembly and the purpose of this act to clarify the relevant chapters of

Titles 1, 6, 9, 13, 14, 16, 17, 20, 22, 23, and 27 of the Arkansas Code Annotated of 1987.”

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Galchus, Survey of Labor Law, 3 U. Ark. Little Rock L.J. 251.

1-5-109. Prisoners of War Remembrance Day.

(a) The ninth day of April of each year shall hereafter be known as “Prisoners of War Remembrance Day”.

(b) On this day every Arkansan is encouraged to commemorate the sacrifices of those persons who suffered captivity in foreign lands while in the service of their country. Furthermore, all Arkansans are encouraged to devote some portion of Prisoners of War Remembrance Day in solemn contemplation on the plight of the men and women of this country who have been held prisoners of war.

(c) The superintendent of each public school in this state shall arrange for appropriate exercises on campus to commemorate Prisoners of War Remembrance Day.

History. Acts 1989, No. 519, § 1.

1-5-110. National Garden Week.

The first full week in June is hereby established as “National Garden Week”.

History. Acts 1993, No. 351, § 1.

1-5-111. Arkansas Agriculture Recognition Day.

The first Friday in March of each year is designated as “Arkansas Agriculture Recognition Day” in this state.

History. Acts 1999, No. 13, § 1.

1-5-112. POW/MIA Recognition Day.

(a) The third Friday in September shall be known as “POW/MIA Recognition Day” to honor American prisoners of war and those missing in action, all of whom have made extraordinary sacrifices on behalf of the United States of America.

(b) POW/MIA Recognition Day shall not be a legal holiday, but shall be a memorial day to be commemorated by the issuance of an appropriate proclamation by the Governor.

History. Acts 1999, No. 917, § 1.

1-5-113. Native American Heritage Week.

(a) The third week in September of each year shall be known in Arkansas as “Native American Heritage Week” to honor the integral role that Native Americans have played in the history of the state and the rich contributions Native Americans have made to the history of Arkansas, including the state’s role as home to many of the roads and trails along the Trail of Tears.

(b) The Governor shall annually, prior to the third week in September, issue a proclamation proclaiming Native American Heritage Week and in the proclamation shall:

(1) Comment on the significance that Native Americans have played in the state’s history; and

(2) Call upon the citizens of the state to observe Native American Heritage Week and to commemorate Native Americans’ cultural contributions to the heritage of Arkansas.

History. Acts 2001, No. 1117, § 1.

(a) began “Beginning with September 16

A.C.R.C. Notes. As enacted, subsection

through 22, 2001”

1-5-114. Juneteenth Independence Day.

(a) The third Saturday in June shall be known as “Juneteenth Independence Day” to commemorate the end of over two hundred (200) years of slavery in the United States of America and to demonstrate racial reconciliation and healing from the legacy of slavery.

(b) Juneteenth Independence Day shall not be a legal holiday but shall be a memorial day to be commemorated by the issuance of an appropriate proclamation by the Governor.

History. Acts 2005, No. 2101, § 1.

1-5-115. Firefighter Recognition Day.

(a) January 27 of each year shall be known as “Firefighter Recognition Day” in order to honor the men and women who make extraordinary sacrifices on behalf of the citizens of the State of Arkansas while in the line of duty.

(b) Firefighter Recognition Day shall not be a legal holiday but shall be a memorial day to be commemorated by the issuance of an appropriate proclamation by the Governor.

History. Acts 2005, No. 444, § 1.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of assembly, General Provisions, 28 U. Ark. Legislation, 2005 Arkansas General As- Little Rock L. Rev. 317.

1-5-116. Hemophilia Awareness Day.

(a) The General Assembly finds that:

(1) Hemophilia is the name of several hereditary genetic illnesses that impair the body's ability to control bleeding;

(2) Hemophilia is characterized by excessive, uncontrollable bleeding caused by missing or low-level clotting factor in the blood;

(3) Hemophiliac bleeding may occur even when a sufferer has sustained no injury;

(4) Hemophiliac bleeding most often occurs in the joints and in the head;

(5) Approximately twenty thousand (20,000) citizens nationwide are suffering from hemophilia, and one (1) in each five thousand (5,000) live male births in the United States results in hemophilia;

(6) Hemophilia affects males almost exclusively, affecting one in five thousand (1 in 5,000) males;

(7) Hemophilia occurs in all demographic groups;

(8) There is no cure for hemophilia; and

(9) Hemophilia is a lifelong condition that can be controlled with regular injections of the deficient clotting factor.

(b) The first Monday in May of each year shall be known in Arkansas as "Hemophilia Awareness Day".

(c) Hemophilia Awareness Day shall not be a legal holiday but shall be a memorial day to be commemorated by the issuance of an appropriate proclamation by the Governor.

History. Acts 2007, No. 203, § 1.

TITLE 2

AGRICULTURE

SUBTITLE 1. GENERAL PROVISIONS

CHAPTER.

1. GENERAL PROVISIONS.
2. AGRICULTURAL COOPERATIVE ASSOCIATIONS.
3. ARKANSAS AGRICULTURAL FOREIGN INVESTMENT.
4. AGRICULTURAL OPERATIONS AS NUISANCES.
5. DOMESTIC FISH FARMING.
6. CATFISH PROCESSOR FAIR PRACTICES ACT.
7. FARM MEDIATION.
8. TAX CREDITS FOR BIOTECHNOLOGY AND ADVANCED BIOFUELS.
9. CATFISH INDUSTRY.
10. ARKANSAS MILK STABILIZATION BOARD.
- 11-14. [RESERVED.]

SUBTITLE 2. AGRONOMY

CHAPTER.

15. GENERAL PROVISIONS.
16. PLANT DISEASE AND PEST CONTROL.
17. WAREHOUSING OF GRAIN.
18. SEEDS.
19. FERTILIZERS, LIMING MATERIALS, AND SOIL AMENDMENT.
20. PROCESSING, GRADING, LABELING, AND MARKETING OF PRODUCTS.
21. NURSERIES.
22. BEES AND APIARIES.
23. ARBITRATION OF DEFECTIVE SEED CLAIMS.
- 24-31. [RESERVED.]

SUBTITLE 3. LIVESTOCK

CHAPTER.

32. GENERAL PROVISIONS.
33. ARKANSAS LIVESTOCK AND POULTRY COMMISSION.
34. BRANDS AND MARKS.
35. MARKETING, SALE, AND TRANSPORTATION.
36. LIVESTOCK SHOWS AND FAIRS.
37. ARKANSAS FEED LAW OF 1997.
38. LIVESTOCK RUNNING AT LARGE OR STRAYING.
39. FENCES.
40. CONTROL OF CONTAGIOUS DISEASES.

SUBTITLE 1. GENERAL PROVISIONS

CHAPTER 1

GENERAL PROVISIONS

SUBCHAPTER.

1. GENERAL PROVISIONS.

SUBCHAPTER

2. ARKANSAS YOUNG AND BEGINNING FARMER ADVISORY BOARD.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

2-1-101. Prohibition against center pivot

irrigation discharge on interstate.

2-1-101. Prohibition against center pivot irrigation discharge on interstate.

(a) It is unlawful for a person, sole proprietorship, partnership, or corporation that engages in irrigation of any farm or agricultural lands to intentionally permit or cause any center pivot irrigation water to be discharged onto the traveled portion of any interstate or state highway.

(b)(1) A first violation of this section shall cause a warning to be issued.

(2) Upon conviction of a second or subsequent offense, the offender shall be guilty of a violation and punished by a fine of not less than one hundred dollars (\$100) nor more than two hundred fifty dollars (\$250).

(c) It is an affirmative defense to prosecution under this section that the discharge of center pivot irrigation waters onto an interstate or state highway resulted from winds of such intensity that no mechanical device that is intended to prevent spray from reaching the roadway could have prevented the spraying or that the discharge resulted from excessive rainfall that contributed to flooding of the roadway.

History. Acts 2001, No. 1753, § 1; 2005, No. 1994, § 2.

Amendments. The 2005 amendment substituted "Upon conviction of a second

or subsequent offense, the offender shall be guilty of a violation and punished" for "A second or subsequent offense shall be punishable" in (b)(2).

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2001 Arkansas General As-

sembly, Agricultural Law, 24 U. Ark. Little Rock L. Rev. 403.

SUBCHAPTER 2 — ARKANSAS YOUNG AND BEGINNING FARMER ADVISORY BOARD

SECTION.

2-1-201. Established.

2-1-202. Board qualifications and terms.

2-1-203. Board membership.

SECTION.

2-1-204. Powers and duties.

2-1-205. Meetings.

2-1-206. Ancillary committee.

2-1-201. Established.

(a) The Arkansas Young and Beginning Farmer Advisory Board is established to advise agriculture-related agencies of state government with respect to the impact the agencies have on the future of agriculture and the agricultural way of life in Arkansas and to help young Arkansas

farmers appreciate their heritage and agricultural work in relation to the history and the economy of Arkansas.

(b) The offices of the board shall be located within the Arkansas Economic Development Commission in Little Rock, and the commission shall provide administrative staff for the board and its committees.

History. Acts 2003, No. 1760, § 1.

Development" was changed to "Arkansas

A.C.R.C. Notes. Acts 2007, No. 1602, § 1, provided: "Department of Economic

Economic Development Commission" in (b).

2-1-202. Board qualifications and terms.

(a) The Arkansas Young and Beginning Farmer Advisory Board shall consist of members appointed under § 2-1-203 who are residents and electors of this state.

(b)(1) The membership of the board shall be made up of young persons interested in the preservation and development of agriculture in Arkansas and the preservation of the agricultural way of life.

(2) Each member shall be under the age of forty-five (45) at the beginning of the member's term.

(3)(A) At least sixteen (16) of the members shall be full-time farmers having eighty percent (80%) or more of their personal incomes from farming or agricultural activities.

(B) The remainder of the board's membership may be less-than-full-time farmers or persons employed in an agriculture-related business.

(c)(1)(A) Except for the initial terms of the board, each member shall serve for a term of two (2) years.

(B) The term of office of each member shall begin on January 15 following the expiration date of his or her predecessor's term and shall end on January 14 of the second year following the year in which the term began.

(C) The terms of the initial members shall be staggered evenly between one (1) year and two (2) years as may be determined by lot at the board's first meeting.

(2) Any vacancies arising in the membership of the board for any reason other than the expiration of the regular terms shall be filled by appointment by the appointing authority effective until the expiration of the regular term.

History. Acts 2003, No. 1760, § 1; 2005, No. 1962, § 1.

substituted "members appointed under § 2-1-203" for "twenty-two (22) members"

Amendments. The 2005 amendment

in (a).

2-1-203. Board membership.

The membership of the Arkansas Young and Beginning Farmer Advisory Board shall be as follows:

(1) Four (4) members appointed by the Governor;

(2) One (1) member appointed by the Lieutenant Governor;

(3) One (1) member appointed by each United States Senator for Arkansas who shall represent the state at large;

(4) One (1) member appointed by each Arkansas Representative of the United States House of Representatives in whose congressional district the member shall reside;

(5) Two (2) members appointed by the President Pro Tempore of the Senate;

(6) Two (2) members appointed by the Speaker of the House of Representatives;

(7) Three (3) members appointed by the Vice President for Agriculture of the Division of Agriculture of the University of Arkansas System to represent each Cooperative Extension Service district;

(8) One (1) member appointed by the Director of the Arkansas Livestock and Poultry Commission;

(9) One (1) member appointed by the Director of the Arkansas Natural Resources Commission;

(10) One (1) member appointed by the Director of the State Plant Board;

(11) Two (2) members appointed by the Secretary of the Arkansas Agriculture Department.

History. Acts 2003, No. 1760, § 1; 2007, No. 672, § 1.

Amendments. The 2007 amendment substituted "One (1) member" for "Two (2) members" in (2); substituted "Arkansas

Natural Resources Commission" for "Arkansas Soil and Water Conservation Commission" in (9); added present (11); deleted former (11) and (12); and made related changes.

2-1-204. Powers and duties.

The Arkansas Young and Beginning Farmer Advisory Board shall:

(1) Communicate to the general public and the federal government the importance of young and beginning farmers to agriculture in the State of Arkansas;

(2) Address issues relating to the needs of young and beginning farmers in Arkansas;

(3) Establish committees to develop projects relating to aspects of life for young and beginning farmers in Arkansas;

(4)(A) Hold meetings of the board at least two (2) times a year.

(B) Special meetings may be held at the call of the chair;

(5) Promulgate a mission statement and the administrative procedures necessary to implement this subchapter; and

(6) Apply for, receive, and use gifts, grants, and donations from private or public sources.

History. Acts 2003, No. 1760, § 1; 2007, No. 672, § 1.

Amendments. The 2007 amendment

inserted (4)(B); rewrote (4)(A); added (6); and made related changes.

2-1-205. Meetings.

(a) The Vice President for Agriculture of the University of Arkansas System shall call the first meeting of the Arkansas Young and Beginning Farmer Advisory Board.

(b)(1) At the first meeting, the board shall select from its membership a chair, a vice chair, and a secretary who shall serve until the first meeting of the board in the following year.

(2) The board shall elect officers annually to serve one-year terms at the board's first meeting of each calendar year.

(c)(1) The board shall divide itself into four (4) committees for finance, education, environment, and product promotion.

(2) Each internal committee shall have a chair elected by the board.

(d) A quorum shall consist of not less than a majority of the membership of the board, and the affirmative vote of that number is necessary for the disposition of the board's business.

(e)(1) Members of the board shall receive no pay for services with respect to attendance at each regular or special meeting of the board.

(2)(A) However, if funds are appropriated for the purpose, members are entitled to reimbursement under § 25-16-902 for each day the board is in session.

(B) Reimbursement is in an amount equal to the maximum daily allowance for meals and lodging paid as provided by law to a state employee for in-state travel plus mileage at the rate per mile provided by law for the reimbursement of mileage expense for state employees for travel from their homes to the place of the meeting and their return.

History. Acts 2003, No. 1760, § 1.

2-1-206. Ancillary committee.

(a) The Arkansas Young and Beginning Farmer Advisory Board may establish under its administrative procedures an ancillary committee of outside agricultural representatives to assist and advise the board and work on projects designated by the board.

(b) The ancillary committee may be composed of members from each of the following organizations and agriculture-related businesses:

- (1) Arkansas Farm Bureau Federation;
- (2) Arkansas Cattlemen's Association;
- (3) Arkansas Poultry Federation;
- (4) The Arkansas aquaculture industry;
- (5) The Arkansas row crop producers; and
- (6) Other agriculture promotion groups, boards, and commissions.

History. Acts 2003, No. 1760, § 1.

CHAPTER 2

AGRICULTURAL COOPERATIVE ASSOCIATIONS

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. COTTON ASSOCIATIONS.
3. MERGER AND CONSOLIDATION.
4. MARKETING ASSOCIATIONS.

Cross References. Wildlife causing crop damage, § 15-44-114.

RESEARCH REFERENCES

Am. Jur. 18 Am. Jur. 2d, Coop. Asso., § 1 et seq.

Ark. L. Notes. Matthews, Agricultural Cooperatives in Arkansas — Abuse of Discretion in Retiring Equity, 1985 Ark. L. Notes 79.

Ark. L. Rev. Organization of Agricultural Marketing Cooperatives, 5 Ark. L. Rev. 173.

Fee and Hoberg, Potential Liability of Directors of Agricultural Cooperatives, 37 Ark. L. Rev. 60.

C.J.S. 3 C.J.S., Agri., § 138 et seq.

U. Ark. Little Rock L.J. Mathews, Corporate Statutes — Which One Applies?, 13 U. Ark. Little Rock L.J. 83.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 2-2-101. Purpose.
- 2-2-102. Definitions.
- 2-2-103. Construction.
- 2-2-104. Who may organize.
- 2-2-105. Reasons for organizing.
- 2-2-106. Powers.
- 2-2-107. Members.
- 2-2-108. Articles of association.
- 2-2-109. Amendments to articles.
- 2-2-110. Bylaws — Amendment of articles or bylaws.
- 2-2-111. Regular and special meetings.
- 2-2-112. Board of directors.
- 2-2-113. Officers.
- 2-2-114. Certificates of membership or stock.

SECTION.

- 2-2-115. Matters referred to membership.
- 2-2-116. Marketing contracts — Participation agreements.
- 2-2-117. Remedies for breach of bylaws or contracts.
- 2-2-118. Penalties for inducing breach of contract.
- 2-2-119. General corporation laws.
- 2-2-120. Interest in similar entities.
- 2-2-121. Existing entities may participate.
- 2-2-122. Arrangements not in restraint of trade.
- 2-2-123. Annual license fee — Taxation.
- 2-2-124. Filing fees.

Cross References. Cooperative associations, § 4-30-101 et seq.

Liability of cooperatives for torts, § 4-30-118.

Taxation exemption of receipts from

sale of certain agricultural products, § 26-52-405.

Effective Dates. Acts 1963, No. 90, § 2: Feb. 27, 1963. Emergency clause provided: "It is hereby found and determined

by the General Assembly that newly established regulations of the federal government are working undue hardships on a number of cooperatives organized under the laws of this state; that such hardships are the result of existing provisions of laws of this state governing such cooperatives; and, that the immediate passage of this act is necessary to make the needed changes in the laws governing such cooperatives in order to remove such hardships. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1969, No. 311, § 3: Mar. 24, 1969. Emergency clause provided: "It is hereby

found and determined by the General Assembly that additional revenues will be needed during the next biennium to maintain the present level of state services; that thousands of dollars are being lost in revenues to this state through special exemptions and exclusions contained in the various tax laws of this state; and that in order to remove these exemptions and exclusions and thereby increase the revenues from such sources, it is necessary that this act become effective immediately. Therefore, an emergency is hereby declared to exist and this act, being necessary for the immediate preservation of the public peace, health and safety shall become effective from and after its passage and approval."

CASE NOTES

Cited: Jefferson Coop. Gin, Inc. v. Milam, 255 Ark. 479, 500 S.W.2d 932 (1973);

Conway County Farmers Ass'n v. United States, 588 F.2d 592 (8th Cir. 1978).

2-2-101. Purpose.

(a) The purposes of this subchapter are to provide for:

(1) The formation and operation of agricultural cooperative associations; and

(2) The rights, powers, liabilities, and duties of cooperative associations.

(b) Associations organized under this subchapter shall be deemed to be nonprofit, inasmuch as they are not organized for the purpose of making profits for themselves or for their members as proprietors, but only for their members as patrons and employees of the associations.

History. Acts 1939, No. 153, § 1; A.S.A. 1947, § 77-1001.

CASE NOTES

Cited: Two Bros. Farm v. Riceland Foods, Inc., 57 Ark. App. 25, 940 S.W.2d 889 (1997).

2-2-102. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Agricultural products" means horticultural, viticultural, forestry, dairy, livestock, poultry, bee, and any other farm, ranch, plantation, and range products;

(2) "Association" means any association organized under this subchapter;

(3) "Member" means a member of record as determined pursuant to the articles of association and bylaws of an association. The term "member" shall include the holder of a membership in an association without capital stock and the holder of common stock in an association organized with capital stock; and

(4) "Person" means individuals, firms, partnerships, corporations, and associations.

History. Acts 1939, No. 153, § 2; 1981, No. 121, § 1; A.S.A. 1947, § 77-1002.

2-2-103. Construction.

(a) Any provisions of law which otherwise would be in conflict with this subchapter shall not be construed as applying to an association provided for in this subchapter.

(b) No provision of law shall be deemed to be repealed by this subchapter.

(c) This subchapter shall not affect the provisions of the Cooperative Marketing Act, § 2-2-401 et seq.

History. Acts 1939, No. 153, § 26; A.S.A. 1947, § 77-1025.

2-2-104. Who may organize.

Any number of persons, not less than five (5), who are engaged in the production of agricultural commodities may form a cooperative association with or without capital stock under the provisions of this subchapter.

History. Acts 1939, No. 153, § 3; A.S.A. 1947, § 77-1003.

2-2-105. Reasons for organizing.

An association may be organized to engage in any agricultural or related activity, including, but without limitation, any activity in connection with the producing, marketing, selling, harvesting, dairying, preserving, drying, processing, canning, packing, milling, ginning, compressing, storing, transporting, handling, or utilization of any agricultural or forestry products produced by it or delivered to it by its members or others; with the manufacturing or marketing of the by-products thereof, or in connection with the purchase, hiring, or use by it or its members or others of supplies, machinery, or equipment; in the acquisition or improvement of land; in the construction or maintenance of houses, barns, sheds, or facilities for its use or the use of its members; for indemnifying or replacing damaged, lost, or destroyed livestock or other tangible personal property pertaining to agriculture

belonging to its members; in burial activities; or the furnishing of medical, dental, health, hospitalization, nursing, or any related services, or medicines or medical supplies to its members and their families.

History. Acts 1939, No. 153, § 4; A.S.A. 1947, § 77-1004.

2-2-106. Powers.

Each association incorporated under this subchapter shall have the following powers:

(1) To engage in any activity in connection with any agricultural or related activity, including, but without limitation, any activity in connection with the producing, marketing, selling, harvesting, dairying, preserving, drying, processing, canning, packing, milling, ginning, compressing, storing, transporting, handling, or utilization of any agricultural or forestry products produced by it or delivered to it by its members or others; with the manufacturing or marketing of the by-products thereof; in connection with the purchase, hiring, or use by it or its members or others of supplies, machinery, or equipment; in the acquisition or improvement of land; in the construction or maintenance of houses, barns, sheds, or facilities for its use or the use of its members; for indemnifying or replacing damaged, lost, or destroyed livestock or other tangible personal property pertaining to agriculture belonging to its members; in burial activities; or the furnishing of medical, dental, health, hospitalization, nursing, or any related services, or medicines or medical supplies to its members and their families;

(2) To borrow money and to make advances to members;

(3)(A) To establish funds in pools for the purposes of indemnifying or replacing damaged, lost, or destroyed livestock or other tangible personal property pertaining to agriculture belonging to members.

(B) Associations organized under this subchapter which shall engage in the activities enumerated in this subdivision (3) shall not be deemed to be insurance companies and shall not be subject to the insurance laws of Arkansas;

(4) To purchase or otherwise acquire and to hold, own, and exercise all rights of ownership in, and to sell, transfer, or pledge or guarantee the payment of dividends or interest on, or the retirement or redemption of shares of the capital stock or bonds of any corporation or association engaged in any related activity or in the production, warehousing, handling, or marketing of any of the products of the type handled by the association;

(5) To establish reserves and to invest those funds in bonds or such other property as may be provided in the bylaws;

(6) To purchase or otherwise acquire or to buy, hold, and exercise all privileges of ownership or tenancy over such real and personal property as may be necessary or convenient for the conducting and operating of any of the business of the association or incidental thereto;

(7)(A) To arrange medical, dental, health, surgical, nursing, hospitalization, and related services and benefits for the members and families of the members.

(B) Associations organized under this subchapter for the purposes specified in this subdivision (7) shall not be deemed to be insurance companies and shall not be subject to the insurance laws of Arkansas;

(8)(A) To do each and every thing necessary, suitable, or proper for the accomplishment of any of the purposes or the attainment of any one (1) or more of the objects enumerated in this section, or conducive to or expedient for the interest or benefit of the association, and to contract accordingly.

(B) In addition, to exercise and possess all powers, rights, and privileges necessary or incidental to the purposes for which the association is organized or to the activities in which it is engaged, and to do any such thing anywhere;

(9) To contract and to sue and be sued; and

(10) To act as agent or representative of any members or others in any of the activities enumerated in this section.

History. Acts 1939, No. 153, § 6; A.S.A. 1947, § 77-1006.

CASE NOTES

Wine Manufacturer.

The manufacture of wine does not come within the purview of this section. *Altus*

Coop. Winery v. Morley, 218 Ark. 492, 237 S.W.2d 481 (1951).

2-2-107. Members.

(a)(1) Under the terms and conditions prescribed in its bylaws, an association formed under this subchapter may admit any persons as members who are engaged in the production of agricultural commodities, including the lessees and tenants of lands used for production of agricultural commodities and lessors and landlords who receive as rent all or part of the crops raised on the leased premises, and issue certificates of common stock or membership to them.

(2) Certificates of stock or membership shall not be transferable except as provided in the articles of association or the bylaws. No person shall otherwise acquire, by operation of law or otherwise, the benefits of membership except as provided in this subchapter.

(b) If a member of any association organized under this subchapter is other than a natural person, the member may be represented by any individual, associate, officer, manager, or member thereof, duly authorized in writing.

History. Acts 1939, No. 153, § 7; A.S.A. 1947, § 77-1007.

CASE NOTES

Sharecroppers and Tenants.

Sharecropper who received part of proceeds of cotton crop delivered to cooperative gin would, under articles and bylaws of association, share in the patronage payments regardless of whether he or she was a stockholder or member of the cooperative, in the absence of any contract to the

contrary. *Houck v. Birmingham*, 217 Ark. 449, 230 S.W.2d 952 (1950).

Sharecroppers and tenants were entitled to claim refunds where cotton gin cooperative realized a profit. *Collie v. Coleman*, 223 Ark. 206, 265 S.W.2d 515 (1954).

2-2-108. Articles of association.

(a) Each association formed under this subchapter must prepare and file articles of association, setting forth:

- (1) The name of the association;
- (2) The purposes for which it is formed;
- (3) The place where its principal business will be transacted, which shall be its domicile;
- (4) The term for which it is to exist, which may be perpetual;
- (5) The number of directors thereof, which must not be fewer than five (5) and may be any number in excess thereof, and the term of office of the directors;

(6) If organized without capital stock, the classes of membership, if more than one (1) class of membership is authorized, and the rules determining the property rights of all classes of members in the event of dissolution; and

(7)(A) If organized with capital stock, the amount of stock and the number of shares into which it is divided and the par value thereof.

(B)(i) The capital stock may be divided into preferred and common stock.

(ii) If so divided, the articles of association must contain a statement of the number of shares of stock to which preference is granted, the nature and definite extent of the preference and privileges granted to each, and the number of shares of stock to which no preference is granted.

(b) The articles must be subscribed by the incorporators and acknowledged by them before an officer authorized by the law of this state to take and certify acknowledgments. They shall be filed and recorded in the office of the Secretary of State.

History. Acts 1939, No. 153, § 8; A.S.A. 1947, § 77-1008.

2-2-109. Amendments to articles.

(a) The articles of association may be altered or amended at any regular or special meeting of the stockholders or members called for that purpose.

(b) Amendments to the articles of association, when so adopted, shall be certified by the president and secretary of the association and shall be filed with the Secretary of State.

History. Acts 1939, No. 153, § 9; A.S.A. 1947, § 77-1009.

2-2-110. Bylaws — Amendment of articles or bylaws.

(a)(1) Each association incorporated under this subchapter must adopt for its government and management a code of bylaws not inconsistent with the articles of association or the powers granted in this subchapter.

(2) A majority vote of the incorporators and members or stockholders or their written assent is necessary to adopt the bylaws.

(3) Each association under its bylaws may provide without limitation for any or all of the following matters:

(A) The time, place, and manner of calling and conducting its meetings;

(B) The number of stockholders or members constituting a quorum;

(C)(i) The right of members or stockholders to vote; and

(ii) The conditions, manner, form, and effect of such votes;

(D) The number of directors constituting a quorum;

(E)(i) The qualifications, duties, and terms of office of directors and officers;

(ii) The time of their election; and

(iii) The mode and manner of giving notice thereof;

(F) Penalties for violations of the bylaws;

(G) The form and manner of amendment of bylaws;

(H)(i) The amount of entrance, organization, and membership fees, if any;

(ii) The manner and method of collection of the fees; and

(iii) The purposes for which they may be used;

(I)(i) The amount which each member or stockholder shall be required to pay annually or from time to time, if at all, to carry on the business of the association;

(ii) The charge, if any, to be paid by each member or stockholder for services rendered by the association to him or her and the time of payment and the manner of collection; and

(iii) The producing, marketing, renting, leasing, or other contract between the association and its members or stockholders, which every member or stockholder may be required to sign; and

(J)(i) The qualifications of members or stockholders of the association and the conditions precedent to membership or ownership of common and preferred stock;

(ii) The method, time, and manner of permitting members to withdraw;

(iii) The manner of assignment and transfer of the interest of members and of the shares of common and preferred stock;

(iv) The conditions upon which and the time when membership of any member shall cease;

(v) The mode, manner, and effect of the expulsion of a member;

(vi) The manner of determining the value of a member's or stockholder's interest and the provision for its purchase by the association upon the death or withdrawal of a member or stockholder or upon the expulsion of a member or forfeiture of his or her membership;

(vii) The method, time, and manner of allotment and distribution of surpluses;

(viii) The manner and method of removal from office of any officer or director of the association; and

(ix) The manner and method of filling vacancies.

(b)(1) For the purpose of amending the articles of association or for the purpose of amending the bylaws of the association, or for both purposes, a quorum for any stockholders' meeting for all associations organized under this subchapter shall be members or voting stockholders representing five percent (5%) of the voting power of the association who shall be present in person or voting by proxy.

(2) As to all other association business, the quorum established by the stockholders or members as authorized in subdivision (a)(3)(B) of this section, which may include members or stockholders voting in person or by proxy, shall govern.

(c) For the purpose of amending articles of association or for the purpose of amending bylaws of the association, or for both purposes, a majority vote of the votes cast at a meeting at which a quorum is present, in person or by proxy, shall be sufficient to adopt amendments.

History. Acts 1939, No. 153, § 10;
1963, No. 90, § 1; 1983, No. 163, § 1;
A.S.A. 1947, § 77-1010.

CASE NOTES

Cited: *Robertson v. White*, 635 F. Supp.
851 (W.D. Ark. 1986).

2-2-111. Regular and special meetings.

(a) In its bylaws, each association shall provide for one (1) or more regular meetings annually.

(b)(1) The board of directors shall have the right to call a special meeting at any time. Members or stockholders holding ten percent (10%) of the voting power may file a petition with the chair of the board stating the specific business to be brought before the association and demand a special meeting at any time.

(2) These meetings must be called by the board.

(c)(1) Notice of all meetings, together with a statement of the purposes thereof, shall be mailed to each member at least five (5) days prior to the meeting.

(2) The bylaws may require instead that the notice may be given by publication in a newspaper of general circulation, published at the principal place of business of the association. If no newspaper is published at that place, notice may be given in a newspaper having circulation at the principal place of business of the association.

History. Acts 1939, No. 153, § 11; 1983, No. 163, § 2; A.S.A. 1947, § 77-1011.

2-2-112. Board of directors.

(a)(1) The affairs of the association shall be managed by a board of not less than five (5) directors.

(2)(A)(i) The bylaws may provide that the territory in which the association has members shall be divided into districts and that the directors shall be elected according to the districts.

(ii) In such cases, the bylaws shall specify the number of directors to be elected by each district and the manner and method of reapportioning the directors and redistricting the territory covered by the association. The bylaws may provide for a quorum of the directors in each district.

(B) The bylaws may provide that primary elections should be held in each district to elect the directors apportioned to the districts, and the results of all the primary elections must be ratified by the next regular meeting of the association or may be considered final as to the association.

(b) The bylaws may provide that one (1) or more directors may be appointed by the Governor, the Dean of the College of Agriculture of the University of Arkansas, or any other designated federal or state public official or commission.

(c)(1) Where not otherwise prohibited by the bylaws, the directors of the association may provide a fair remuneration for the time actually spent by its officers, directors, and employees in its service.

(2) No director, during the term of his or her office, shall be a party to a contract for profit with the association differing in any way from the business relations accorded regular members or holders of common stock of the association.

(d) The bylaws may provide for an executive committee and may allot to the committee all the functions and powers of the board of directors, subject to the general direction and control of the board.

History. Acts 1939, No. 153, § 12; A.S.A. 1947, § 77-1012.

2-2-113. Officers.

(a) The board of directors shall elect a president, one (1) or more vice presidents, a secretary, and a treasurer, and they may combine the two

(2) latter officers and designate the combined office as secretary-treasurer.

(b)(1) The treasurer may be a bank or any depository, and as such shall not be considered as an officer but as a functionary of the board.

(2) In such case, the secretary shall perform the usual accounting duties of the treasurer, excepting that the funds shall be deposited only as authorized by the board.

History. Acts 1939, No. 153, § 13;
A.S.A. 1947, § 77-1013.

CASE NOTES

Cited: Robertson v. White, 635 F. Supp.
851 (W.D. Ark. 1986).

2-2-114. Certificates of membership or stock.

(a) When a member of an association established without capital stock has paid his or her membership fee in full, he or she shall receive a certificate of membership.

(b) Except for debts lawfully contracted between the member and the association, no member shall be liable for the debts of the association to an amount exceeding the sum remaining unpaid on his or her membership fee or his or her subscription to the capital stock, including any unpaid balance on any promissory notes given in payment thereof.

(c)(1) Unless provided otherwise in the articles of association or bylaws of an association, no member or stockholder shall be entitled to more than one (1) vote.

(2) In an election for directors, the number of votes a member or stockholder is entitled to cast may be multiplied by the number of directors being elected. The member or stockholder may distribute the votes among as many candidates as he or she shall see fit.

(d) Any provision of this subchapter or any other law which is applied to an association organized under this subchapter, referring to requirements for a vote or quorum based on a total number or proportion of members or stockholders, shall mean the number or proportion of the votes entitled to be cast by the members or stockholders where an association's articles of association or bylaws entitle any member to more than one (1) vote.

(e) For purposes of this subchapter or any other law which is applied to an association formed under this subchapter, if permitted by the articles of association or the bylaws of the association, any vote of a member or stockholder may be made in person or by proxy and may be counted in the establishment of a quorum.

(f)(1) No stockholder of a cooperative association organized under this subchapter shall own more than one-twentieth ($\frac{1}{20}$) of the common stock of the association or more than one (1) share of common stock if there are fewer than twenty (20) common stockholders.

(2) Such an association, in its bylaws, may limit the amount of common stock which one (1) member may own to any amount less than one-twentieth ($\frac{1}{20}$) of the common stock.

(g)(1) Any association organized with stock under this subchapter may issue preferred stock, with or without the right to vote.

(2) The stock may be redeemable or retirable by the association on such terms and conditions as may be provided for by the articles of association and printed on the face of the certificate.

(h)(1)(A) No association shall issue stock or a membership certificate to a member until it has been fully paid for.

(B) The promissory notes of the members may be accepted by the association as full or partial payment.

(2) The association shall hold the stock or membership certificate as security for the payment of the note, but such retention as security shall not affect the member's right to vote.

History. Acts 1939, No. 153, § 14; 1983, No. 163, § 3; A.S.A. 1947, § 77-1014.

2-2-115. Matters referred to membership.

Upon demand of one-third ($\frac{1}{3}$) of the entire board of directors, any matter that has been approved or passed by the board must be referred to the entire membership or the stockholders for decision at the next special or regular meeting. A special meeting may be called for that purpose.

History. Acts 1939, No. 153, § 15; A.S.A. 1947, § 77-1015.

2-2-116. Marketing contracts — Participation agreements.

(a)(1) Upon resolution adopted by its board of directors, any association may enter into all necessary and proper contracts and agreements and make all necessary and proper stipulations, agreements, contracts, and arrangements with its members, other persons, cooperatives, corporations, or associations formed in this or any other state for the cooperative and more economical carrying on of its business or any parts of its business.

(2) Any two (2) or more associations by agreement between them may unite in employing and using or may expressly employ and use the same methods, means, and agencies for carrying on and conducting their respective businesses.

(b) In addition to or in lieu of the marketing contracts authorized in subsection (a) of this section, the association and its members or others may make and execute any other type of participation agreement in cases in which the association will engage in other than marketing activities as authorized under this subchapter.

History. Acts 1939, No. 153, § 16;
A.S.A. 1947, § 77-1016.

CASE NOTES

ANALYSIS

Agency.
Rental Contracts.

Agency.

Contract between taxpayer and cooperative association to defer payment for rice could be construed as establishing association as taxpayer's agent rather than providing for sale of rice to association. *Oliver v. United States*, 193 F. Supp. 930 (E.D. Ark. 1961).

Rental Contracts.

Sharecroppers and tenants were entitled to claim refunds where cotton gin cooperative company realized a profit; where rental contracts were silent as to refunds, burden of proof was upon principal stockholder landlord to show that tenants waived refunds. *Collie v. Coleman*, 223 Ark. 206, 265 S.W.2d 515 (1954).

2-2-117. Remedies for breach of bylaws or contracts.

(a)(1) The bylaws or the marketing or participation contract of any association existing under this subchapter may fix specific sums as liquidated damages to be paid by the member or stockholder to the association upon the breach or threatened breach by him or her of any provision of the participation agreement or upon the breach or threatened breach by him or her of any provision of the marketing contract regarding the sale or delivery or withholding of products.

(2) These instruments may further provide that the member will pay all costs, premiums for bonds, expenses, and fees in case any action is brought upon the contract by the association.

(3) These provisions shall be valid and enforceable in the courts of law or equity of this state, and the clauses providing for liquidated damages shall be enforceable as such and shall not be regarded as penalties.

(b)(1) In the event of any breach or threatened breach of the marketing contract by a member or other person, the association shall be entitled to an injunction to prevent the breach or further breach of the contract and to a decree of specific performance of the contract.

(2)(A) Pending the adjudication of the action and upon filing a verified complaint showing the breach or threatened breach and upon filing a bond in the sum of one hundred dollars (\$100), the association shall be entitled to an injunction against the member or other person.

(B) The chancellor, in his or her discretion, may increase the bond to five hundred dollars (\$500), after a hearing on five (5) days' notice to the parties if justice demands an increase in the amount of the bond.

(c) In any civil action, upon any marketing contract of any member with any association existing under this subchapter, it shall be conclusively presumed that the products produced by any person, firm, or corporation during the period of time covered by the marketing contract, on the land of the member, however and by whomsoever pro-

duced, are the products of the member. As such, the products of the member are subject to the marketing contract if the products have been grown or acquired under any contract between the member and the other person, firm, or corporation entered into after the execution of the marketing contract. In such actions, the remedies for nondelivery or breach shall lie and be enforceable against the persons, firms, or corporations.

History. Acts 1939, No. 153, § 17; A.S.A. 1947, § 77-1017.

CASE NOTES

Res Judicata.

Where an action was brought under this subchapter and the matters relating thereto were finally determined adversely to the appellant on a prior appeal, it

became the law of the case and a second case could not be considered. *Collie v. Coleman*, 226 Ark. 692, 292 S.W.2d 80 (1956).

2-2-118. Penalties for inducing breach of contract.

Any person or any corporation whose officers or employees knowingly induce or attempt to induce any person to breach his or her marketing or participation contract with an association shall be guilty of a violation and upon conviction shall be subject to a fine of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for the offense and shall be liable to the association aggrieved in a civil suit in the penal sum of five hundred dollars (\$500) for each offense.

History. Acts 1939, No. 153, § 21; A.S.A. 1947, § 77-1021; Acts 2005, No. 1994, § 3.

Amendments. The 2005 amendment substituted "violation and upon conviction" for "misdemeanor."

2-2-119. General corporation laws.

The provisions of the general corporation laws of this state, and all powers and rights thereunder, shall apply to the associations organized under this subchapter, except where the provisions are in conflict with or inconsistent with the express provisions of this subchapter.

History. Acts 1939, No. 153, § 18; A.S.A. 1947, § 77-1018.

tion Act of 1987, § 4-27-101 et seq.

Cross References. Business Corpora-

General corporation laws, § 4-26-101 et seq.

CASE NOTES

Cited: *Robertson v. White*, 635 F. Supp. 851 (W.D. Ark. 1986).

2-2-120. Interest in similar entities.

An association organized or existing under this subchapter may organize, form, operate, own, control, have an interest in, own stock of, or be a member of any corporation or association, with or without capital stock, engaged in any of the activities authorized under this subchapter, whether formed under this subchapter or any other law of this or any other state.

History. Acts 1939, No. 153, § 19;
A.S.A. 1947, § 77-1019.

2-2-121. Existing entities may participate.

(a)(1) Any corporation or association organized under previously existing statutes for purposes authorized in this subchapter, which are otherwise eligible under the provisions of this subchapter, may be brought under the provisions of this subchapter by a majority vote of its stockholders or members.

(2)(A) It shall make out in duplicate a statement signed and sworn to by the president or vice president and secretary to the effect that the corporation or association has decided, by a majority vote of its stockholders or members, to accept the benefits and be bound by the provisions of this subchapter. The statement shall be filed with the charter or articles of association.

(B) The charter or articles of association of the corporation or association shall be amended, if necessary, to comply with the provisions of this subchapter. The charter or articles of association shall be filed as required in this subchapter, except that they shall be signed by a majority of the members of the board of directors.

(b) The bylaws of the corporation or association shall also be amended, if necessary, to comply with the provisions of this subchapter.

(c) The filing fee for filing the statement and charter or articles of association shall be the same as for filing an amendment to the articles of association.

History. Acts 1939, No. 153, § 20;
A.S.A. 1947, § 77-1020.

2-2-122. Arrangements not in restraint of trade.

No association organized or existing under this subchapter shall be deemed to be a combination in restraint of trade or an illegal monopoly or an attempt to lessen competition or fix prices arbitrarily, nor shall the marketing or participation contracts or agreements between the association and its members or others or any agreements authorized by this subchapter be considered illegal or in restraint of trade.

History. Acts 1939, No. 153, § 22;
A.S.A. 1947, § 77-1022.

2-2-123. Annual license fee — Taxation.

(a) Each association organized or existing under this subchapter shall pay an annual license fee of ten dollars (\$10.00) to the Secretary of State.

(b)(1) In addition, each association shall be subject to the Arkansas Gross Receipts Act of 1941, as amended, § 26-52-101 et seq., and the Arkansas Compensating Tax Act of 1949, as amended, § 26-53-101 et seq., and all other taxes levied in this state. However, any association which immediately distributes at the close of each business year all surpluses by cash or certificate to its members shall not be subject to the Income Tax Act of 1929, § 26-51-101 et seq., with respect to the income.

(2) Each association shall be subject to taxes upon its real estate and personal property.

History. Acts 1939, No. 153, § 24; 1969, No. 311, § 1; A.S.A. 1947, § 77-1023.

CASE NOTES**ANALYSIS**

Tax Exemptions.
Tax on Winery.

Tax Exemptions.

To be exempt from license and privilege taxes, an association must be acting within powers granted to it. *Altus Coop. Winery v. Morley*, 218 Ark. 492, 237 S.W.2d 481 (1951).

Nonprofit agriculture cooperative was exempt from the corporate franchise tax although 1969 amendment to this section removed cooperative's exemptions from

some other state taxes, as tax statute must be made expressly applicable to entity and mere removal of some tax exemptions did not allow levying of franchise tax on nonprofit cooperative. *Jefferson Coop. Gin, Inc. v. Milam*, 255 Ark. 479, 500 S.W.2d 932 (1973).

Tax on Winery.

Association is not entitled to manufacture wine from grapes grown by its members and then sell the wine at wholesale without paying privilege taxes imposed on other wineries. *Altus Coop. Winery v. Morley*, 218 Ark. 492, 237 S.W.2d 481 (1951).

2-2-124. Filing fees.

For filing articles of association, an association organized under this subchapter shall pay five dollars (\$5.00), and it shall pay two dollars and fifty cents (\$2.50) for filing an amendment to the articles.

History. Acts 1939, No. 153, § 25; A.S.A. 1947, § 77-1024.

SUBCHAPTER 2 — COTTON ASSOCIATIONS**SECTION.**

2-2-201. Membership.

2-2-202. Penalty.

Effective Dates. Acts 1939, No. 12,
§ 3: effective on passage.

2-2-201. Membership.

(a) A person, firm, or corporation shall become a member of a cotton cooperative association organized and domesticated under the laws of the State of Arkansas only when the membership contract shall be in duplicate and shall state the time of the duration of each contract signed both by the member and the association.

(b) The signature of any person on a draft or check containing conditions which purport to make a person a member of a cotton cooperative association as a prerequisite to obtaining money on any draft or check given to him or her for any cotton which he or she has sold or pledged to any cotton cooperative association shall not be construed as making the person a member of the association, even though he or she has signed or endorsed the check or draft.

History. Acts 1939, No. 12, § 1; 1939,
No. 202, § 1; A.S.A. 1947, § 77-1026.

2-2-202. Penalty.

(a) Any person, firm, or corporation violating any provision of § 2-2-201 shall be guilty of a Class A misdemeanor.

(b) Each violation of any provision of § 2-2-201 shall be deemed a separate offense.

History. Acts 1939, No. 12, § 1-A;
1939, No. 202, § 1-A; A.S.A. 1947, § 77-
1027; Acts 2005, No. 1994, § 330.

Amendments. The 2005 amendment substituted “a Class A misdemeanor” for “a misdemeanor and, upon conviction, punished by a fine of not less than one

hundred dollars (\$100) and not more than one thousand dollars (\$1,000) or by imprisonment of a period of not less than thirty (30) days or not more than six (6) months, or both, in the discretion of the court” in (a).

SUBCHAPTER 3 — MERGER AND CONSOLIDATION

SECTION.

- 2-2-301. Applicability.
- 2-2-302. Provisions supplemental.
- 2-2-303. Procedure for merger.
- 2-2-304. Procedure for consolidation.
- 2-2-305. Approval by members — Abandonment.
- 2-2-306. Articles of merger or consolidation.
- 2-2-307. Effect of merger or consolidation.
- 2-2-308. Merger or consolidation of domestic and foreign associations.

SECTION.

- 2-2-309. Continuance of association existence for title transfers.
- 2-2-310. No approval for financial obligations — Exception.
- 2-2-311. Regular disposition of property.
- 2-2-312. Disposition of property other than in regular course of business.
- 2-2-313. Rights of shareholders, members, and patrons.

2-2-301. Applicability.

Except as otherwise provided in this subchapter, the provisions of this subchapter shall apply exclusively to the merger, consolidation, mortgage, sale, and lease of assets of and by an association subject to the provisions of this subchapter.

History. Acts 1981, No. 121, § 13; A.S.A. 1947, § 77-1039.

2-2-302. Provisions supplemental.

(a) The provisions of this subchapter shall be supplemental to, and part of, §§ 2-2-101 — 2-2-124, 2-2-201, and 2-2-202, and legislation amendatory and supplemental to these provisions relating to agricultural cooperative associations.

(b) The definitions of terms in § 2-2-102 shall be equally applicable with respect to terms used in this subchapter.

History. Acts 1981, No. 121, § 14; 1985, No. 385, § 10; A.S.A. 1947, § 77-1040.

2-2-303. Procedure for merger.

(a) Any two (2) or more domestic associations created pursuant to § 2-2-101 et seq. may merge into one (1) of these associations pursuant to a plan of merger approved in the manner provided in this subchapter.

(b) The board of directors of each association shall, by resolution adopted by each board, approve a plan of merger setting forth:

(1) The names of the associations proposing to merge and the name of the association into which they propose to merge, which is designated as the “surviving association”;

(2) The terms and conditions of the proposed merger;

(3) The manner and basis of converting the shares, patronage, or other interests of each merging association into shares or other interests of the surviving association;

(4) A statement of any changes in the articles of incorporation of the surviving association to be affected by the merger;

(5) The time when the merger shall become effective; and

(6) Such other provisions with respect to the proposed merger as are deemed necessary or desirable.

History. Acts 1981, No. 121, § 2; A.S.A. 1947, § 77-1028.

2-2-304. Procedure for consolidation.

(a) Any two (2) or more domestic associations created pursuant to § 2-2-101 et seq. may consolidate into a new association pursuant to a plan of consolidation approved in the manner provided in this subchapter.

(b) The board of directors of each association by a resolution adopted by each board shall approve a plan of consolidation setting forth:

(1) The names of the associations proposing to consolidate, and the name of the new association into which they propose to consolidate, which is designated as the "new association";

(2) The terms and conditions of the proposed consolidation;

(3) The manner and basis of converting the shares, patronage, or other interests of each association into shares or other interests of the new association;

(4) With respect to the new association, all of the statements required to be set forth in articles of incorporation for associations organized under this subchapter;

(5) The time when the consolidation shall become effective; and

(6) Such other provisions with respect to the proposed consolidation as are deemed necessary or desirable.

History. Acts 1981, No. 121, § 3; A.S.A. 1947, § 77-1029.

2-2-305. Approval by members — Abandonment.

(a)(1) Upon approving the plan of merger or plan of consolidation, the board of directors of each association by resolution shall direct the plan be submitted to a vote at a meeting of members, which may be either an annual or a special meeting.

(2)(A) Written or printed notice shall be given to each member not less than twenty (20) days before the meeting, in the manner provided in this subchapter for the giving of notice of meetings to members, and shall state the purpose of the meeting, whether the meeting is an annual or a special meeting.

(B) A copy or a summary of the plan of merger or plan of consolidation, as the case may be, shall be included in or enclosed with the notice.

(b)(1) At each meeting, a vote of the members shall be taken on the proposed plan of merger or consolidation.

(2) Each member of each association shall be entitled to vote on the proposed plan of merger or consolidation.

(3) The plan of merger or consolidation shall be approved upon receiving the affirmative vote of at least two-thirds ($\frac{2}{3}$) of the votes cast at the meeting in which members holding not less than fifty percent (50%) of the voting power of the association are represented in person or by proxy.

(c) After approval by a vote of the members of each association and at any time prior to the filing of the articles of merger or consolidation, the merger or consolidation may be abandoned pursuant to provisions, if any, set forth in the plan of merger or consolidation.

History. Acts 1981, No. 121, § 4; 1983, No. 163, § 4; A.S.A. 1947, § 77-1030.

2-2-306. Articles of merger or consolidation.

Upon approval, articles of merger or articles of consolidation shall be executed by each association and filed in accordance with this subchapter, which shall be certified by the president and secretary of each association signing them and shall set forth:

(1) The plan of merger or the plan of consolidation, including the time when it shall become effective;

(2) As to each association:

(A) The number of shares or memberships outstanding or votes entitled to be cast; and

(B) If the shares or members of any class are entitled to vote as a class, the designation in number of outstanding shares or memberships or votes entitled to be cast by each class; and

(3) As to each association:

(A) The number of votes cast for and against the plan, respectively; and

(B) If any shares of any class of stock are entitled to vote as a class, the number of shares or votes of each class voted for and against the plan, respectively.

History. Acts 1981, No. 121, § 5; 1983, No. 163, § 5; A.S.A. 1947, § 77-1031.

2-2-307. Effect of merger or consolidation.

(a) The merger or consolidation shall become effective upon the filing in accordance with this subchapter of articles of merger or consolidation or at a time not more than sixty (60) days after the filing, as may be specified in the articles as the time when the merger or consolidation shall become effective.

(b) When the merger or consolidation has been effected:

(1) The several associations party to the plan of merger or consolidation shall be a single association which, in the case of a merger, shall be that association designated in the plan of merger as the surviving association or, in the case of a consolidation, shall be the new association provided for in the plan of consolidation;

(2) Subject to this subchapter, the separate existence of all associations party to the plan of merger or consolidation, except the surviving or new association, shall cease;

(3) The surviving or new association shall have all the rights, privileges, immunities, and powers and shall be subject to all the duties and liabilities of an association organized under this subchapter;

(4)(A) The surviving or new association shall possess all the rights, privileges, immunities, and franchises of a public as well as of a private nature of each of the merging or consolidating associations.

(B)(i) All property, real, personal, and mixed, and all debts due on whatever account, including subscriptions to shares, and all other choses in action, and all and every other interest of or belonging to, or due to each of the associations so merged or consolidated, shall be

taken and deemed to be transferred to and vested in the single association without further act or deed.

(ii) The title to any real estate or any interest therein vested in any of the associations shall not revert or be in any way impaired by reason of the merger or consolidation;

(5)(A) The surviving or new association shall be responsible and liable for all the liabilities and obligations of each of the associations so merged or consolidated.

(B) Any claim existing or action or proceeding pending by or against any of the associations may be prosecuted as if the merger or consolidation had not taken place or the surviving or new association may be substituted in its place.

(C) Neither the rights of creditors nor any liens upon the property of any association shall be impaired by the merger or consolidation; and

(6)(A) In the case of a merger, the articles of incorporation of the surviving association shall be deemed to be amended to the extent, if any, that changes in its articles of incorporation are stated in the plan of merger.

(B) In the case of a consolidation, the statements set forth in the articles of consolidation which are required or permitted to be set forth in the articles of incorporation of associations organized under this subchapter shall be deemed to be the original articles of incorporation of the new association.

History. Acts 1981, No. 121, § 6; A.S.A. 1947, § 77-1032.

2-2-308. Merger or consolidation of domestic and foreign associations.

(a) One (1) or more foreign associations and one (1) or more domestic associations may be merged or consolidated in the following manner if the merger or consolidation is permitted by the laws of the state or country under which each foreign association is organized:

(1) Each domestic association shall comply with the provisions of this subchapter with respect to the merger or consolidation, as the case may be, of domestic associations. Each foreign association shall comply with the applicable provisions of the laws of the state or country under which it is organized; and

(2) If the surviving or new association, as the case may be, is to be governed by laws of any country or state other than this state, it shall comply with the laws of Arkansas with respect to the admission of foreign associations if it is to transact business in this state. Moreover, it shall file with the Secretary of State of this state an irrevocable appointment of the Secretary of State as its agent to accept service of process in any proceeding.

(b)(1) The effect of the merger or consolidation shall be the same as in the case of the merger or consolidation of domestic associations if the surviving or new association is to be governed by the laws of this state.

(2) If the surviving or new association is to be governed by the laws of any country or state other than this state, the effect of the merger or consolidation shall be the same as in the case of the merger or consolidation of domestic associations, except insofar as the laws of the other state provide otherwise.

History. Acts 1981, No. 121, § 7; A.S.A. 1947, § 77-1033.

2-2-309. Continuance of association existence for title transfers.

(a)(1) The existence of each constituent association which has been dissolved through merger or consolidation shall be continued indefinitely without franchise tax liability for the limited purpose of enabling the constituent association to execute through its own officers formal deeds, conveyances, assignments, and other instruments evidencing the transfer from the constituent to the surviving association or new association created by consolidation of any or all properties, real and personal, which have passed from the constituent to the surviving or consolidated association by operation of law.

(2) The execution of any instruments shall not be essential to effect the transfer of title from the constituent to the surviving or consolidated association, inasmuch as the transfer will take effect through operation of law, but the power to execute the instruments is given to the end that it may be exercised:

(A) In respect to properties located in foreign jurisdictions which may not recognize a transmittal of title by operation of law under the merger and consolidation statutes of this state; and

(B) In any other situation where the directors of the surviving or consolidated association consider the execution of the instruments desirable.

(b)(1) This state will recognize and give effect to a transfer of personal property having a situs in this state which is effected by operation of the laws of another state through a merger or consolidation at any time conducted under the laws of the other state.

(2)(A) This state will recognize and give effect to a transfer of title to real estate located in this state effected by operation of law through a merger or consolidation conducted under laws of one (1) or more other states. This transfer shall be done on condition that a copy of the agreement of merger or consolidation, executed between the merging or consolidating associations and certified by the secretary of state of the state in which the surviving or consolidated association is domiciled, shall be filed for record with the Secretary of State of this state.

(B) The Secretary of State of this state shall receive the filing whether the surviving or consolidated association does or does not desire to be admitted to this state.

History. Acts 1981, No. 121, § 8; A.S.A. 1947, § 77-1034.

2-2-310. No approval for financial obligations — Exception.

(a) The board of directors shall not be required to procure any consent from or authorization by the members, except in the instance of the increase of bonded indebtedness of the association, in authorizing:

(1) The procurement of loans, the creation of obligations under which the association is to be primarily or secondarily liable, and the issuance of notes, bonds, and other obligations; and

(2) The mortgage and pledge of all or any part of the association's assets, including after-acquired property, as security for any obligations so incurred.

(b) Where the bonded indebtedness is increased within the meaning of Arkansas Constitution, Article 12, Section 8, authorization of both the creation of the additional indebtedness and the lien securing it shall be required in conformity with the constitutional provision.

History. Acts 1981, No. 121, § 9; A.S.A. 1947, § 77-1035.

2-2-311. Regular disposition of property.

The sale, lease, or exchange of all or substantially all of the property and assets of an association, when made in the usual and regular course of the business of the association, may be made upon such terms and conditions and for such considerations, which may consist in whole or in part of money or real or personal property, including shares of any other domestic or foreign association, as shall be authorized by its board of directors, and no authorization or consent of the members shall be required.

History. Acts 1981, No. 121, § 10; A.S.A. 1947, § 77-1036.

2-2-312. Disposition of property other than in regular course of business.

A sale, lease, or exchange of all or substantially all the property and assets, with or without the goodwill of an association, if not made in the usual and regular course of its business, may be made upon the terms and conditions and for consideration, which may consist in whole or in part of money or real or personal property, including shares of any other domestic or foreign association, as may be authorized in the following manner:

(1) The board of directors shall adopt a resolution recommending the sale, lease, or exchange and directing the submission thereof to a vote at a meeting of members, which may be either an annual or a special meeting;

(2) Written or printed notice shall be given to each member of record within the time and in the manner provided in this subchapter for the giving of notice of special meetings of members. Whether the meeting is an annual or a special meeting, the notice shall state that the purpose or one of the purposes of the meeting is to consider the proposed sale, lease, or exchange;

(3)(A) At the meeting, the members may authorize the sale, lease, or exchange and may fix or may authorize the board to fix any or all of the terms and conditions thereof and the consideration to be received by the association.

(B) Each member of the association shall be entitled to vote thereon.

(C) The authorization shall require the affirmative vote of at least two-thirds ($\frac{2}{3}$) of the votes cast at the meeting in which members holding not less than fifty percent (50%) of the voting power of the association are represented in person or by proxy; and

(4) After the authorization by vote of members, the board, nevertheless, in its discretion may abandon the sale, lease, or exchange of assets, subject to the rights of third parties under any contracts relating thereto, without further action or approval by members.

History. Acts 1981, No. 121, § 11;
1983, No. 163, § 6; A.S.A. 1947, § 77-1037.

2-2-313. Rights of shareholders, members, and patrons.

(a) The merger or consolidation of an association under this subchapter shall constitute an assignment to the surviving or new association of all rights of any shareholder, member, or patron in the capital stock, patronage, or other interests in the association determined as of the effective date of the merger or consolidation.

(b) The shareholder, member, or patron in a merger, consolidation, sale, lease, or exchange of all or substantially all the property and assets of an association under this subchapter shall not be entitled to have the fair value of his or her capital stock, patronage, or other interests appraised as may otherwise be required by the general corporation laws of this state if:

(1) The surviving or new association in any merger or consolidation agrees to assume the obligations for the capital stock, patronage, or other interests of the merging or consolidating association, determined as of the effective date of the merger or consolidation, as may be provided under the bylaws or articles of association of the merging or consolidating association, or the association whose assets are sold or leased; or

(2) The acquiring association in any purchase or lease of all or substantially all of the property and assets of a transferring association pays consideration to the transferring association in cash or equity of the acquiring association, or both, the face value of which is equal to or greater than the face value of the issued and outstanding equity of the

transferring association held by its shareholders, members, or patrons, determined as of the effective date of the sale or lease of assets.

History. Acts 1981, No. 121, § 12; A.S.A. 1947, § 77-1038; Acts 1991, No. 436, § 1.

SUBCHAPTER 4 — MARKETING ASSOCIATIONS

SECTION.

- 2-2-401. Title.
- 2-2-402. Purpose.
- 2-2-403. Definitions.
- 2-2-404. Who may organize.
- 2-2-405. Reasons for organizing.
- 2-2-406. Powers.
- 2-2-407. Members.
- 2-2-408. Articles of incorporation.
- 2-2-409. Amendments to articles.
- 2-2-410. Filing fees.
- 2-2-411. Bylaws.
- 2-2-412. [Repealed.]
- 2-2-413. Regular and special meetings.
- 2-2-414. Board of directors.
- 2-2-415. Officers.
- 2-2-416. Removal of officer or director.
- 2-2-417. Certificates of membership or stock ownership.
- 2-2-418. Matters referred to entire membership.

SECTION.

- 2-2-419. Marketing contracts — Remedies.
- 2-2-420. Penalties for inducing breach of contract.
- 2-2-421. Exchange of shares for acquired interests.
- 2-2-422. Annual report.
- 2-2-423. Interest in other corporations.
- 2-2-424. Agreements with other associations.
- 2-2-425. Existing entities may participate.
- 2-2-426. Arrangements not in restraint of trade.
- 2-2-427. Tax exemption.
- 2-2-428. General corporation laws.
- 2-2-429. Conflicting laws.
- 2-2-430. Conversion to nonprofit corporate status.

Effective Dates. Acts 1921, No. 116, § 30: Feb. 14, 1921. Emergency declared.

Acts 1937, No. 351, § 4: Mar. 25, 1937. Emergency declared.

CASE NOTES

Cited: Driver v. Producers Coop., 233 Ark. 334, 345 S.W.2d 16 (1961); Collie v.

Little River Coop., 236 Ark. 725, 370 S.W.2d 62 (1963).

2-2-401. Title.

This subchapter shall be referred to as the “Cooperative Marketing Act”.

History. Acts 1921, No. 116, § 2; Pope’s Dig., § 2287; A.S.A. 1947, § 77-902.

2-2-402. Purpose.

The purpose of this subchapter is to:

- (1) Promote, foster, and encourage the intelligent and orderly marketing of agricultural products through cooperation and to eliminate speculation and waste;
- (2) Make the distribution of agricultural products as direct as can be efficiently done between producer and consumer; and
- (3) Stabilize the marketing problems of agricultural products.

History. Acts 1921, No. 116, § 1; Pope's Dig., § 2286; A.S.A. 1947, § 77-901.

2-2-403. Definitions.

(a) As used in this subchapter:

- (1) "Agricultural products" means horticultural, viticultural, forestry, dairy, livestock, poultry, bee, and farm and ranch products;
- (2) "Member" means actual members of associations without capital stock and holders of common stock in associations organized with capital stock;
- (3) "Association" means any corporation organized under this subchapter; and
- (4) "Person" means individuals, firms, partnerships, corporations, and associations.

(b) Associations organized under this subchapter shall be deemed nonprofit, inasmuch as they are not organized to make profits for themselves as such, or for their members as such, but only for their members as producers.

History. Acts 1921, No. 116, § 2; Pope's Dig., § 2287; A.S.A. 1947, § 77-902.

2-2-404. Who may organize.

Five (5) or more persons engaged in the production of agricultural products may form a nonprofit cooperative association, with or without capital stock, under the provisions of this subchapter.

History. Acts 1921, No. 116, § 3; Pope's Dig., § 2288; A.S.A. 1947, § 77-903.

2-2-405. Reasons for organizing.

An association may be organized to engage in any activity in connection with the marketing or selling of the agricultural products of its members or with the harvesting, preserving, drying, processing, canning, packing, ginning, compressing, storing, handling, shipping, or utilization thereof or the manufacturing or marketing of the by-products thereof; in connection with the manufacturing, selling, or supplying to its members of machinery, equipment, or supplies; in the

financing of the enumerated activities; or in any one (1) or more of the activities specified in this subchapter.

History. Acts 1921, No. 116, § 4; Pope's Dig., § 2289; A.S.A. 1947, § 77-904.

2-2-406. Powers.

Each association incorporated under this subchapter shall have the following powers to:

(1)(A) Engage in any activity in connection with the marketing, selling, harvesting, preserving, drying, processing, canning, packing, ginning, compressing, storing, handling, or utilization of any agricultural products produced or delivered to it by its members; the manufacturing or marketing of the by-products thereof; in connection with the purchase, hiring, or use by members of supplies, machinery, or equipment; in the financing of any such activities; or in any one (1) or more of the activities specified in this section.

(B) No association, however, shall handle the products of nonmembers to an extent greater than that handled for members;

(2) Borrow money and to make advances to members;

(3) Act as the agent or representative of any member in any of the mentioned activities;

(4) Purchase or otherwise acquire and to hold, own, and exercise all rights of ownership in, and to sell, transfer, or pledge shares of the capital stock or bonds of any corporation or association engaged in any related activity or in the handling or marketing of any of the products handled by the association;

(5) Establish reserves and to invest the funds thereof in bonds or such other property as may be provided in the bylaws;

(6) Buy, hold, and exercise all privileges of ownership over such real or personal property as may be necessary or convenient for the conducting and operation of any of the business of the association or incidental thereto; and

(7)(A) Do each and every thing necessary, suitable, or proper for the accomplishment of any one (1) of the purposes or the attainment of any one (1) or more of the objects enumerated in this section or conducive to or expedient for the interest or benefit of the association, and to contract accordingly.

(B) In addition, to exercise and possess all powers, rights, and privileges necessary or incidental to the purposes for which the association is organized or to the activities in which it is engaged.

(C) In addition, to have any other rights, powers, and privileges granted by the laws of this state to ordinary corporations, except as are inconsistent with the express provisions of this subchapter, and to do any such thing anywhere.

History. Acts 1921, No. 116, § 6; 1937, No. 351, § 1; Pope's Dig., § 2291; A.S.A. 1947, § 77-906.

CASE NOTES

ANALYSIS

Future Delivery.
Limits on Authority.
Management of Funds.

Future Delivery.

This section empowers cooperative marketing associations to make contracts for the sale and future delivery of agricultural products. *Arkansas Cotton Growers Coop. Ass'n v. Brown*, 168 Ark. 504, 270 S.W. 946 (1925), *supp. op.*, 168 Ark. 523, 270 S.W. 1119 (1925).

Limits on Authority.

Association had no right to sell rough rice without pooling it or to sell rice on commission. *McCauley v. Arkansas Rice*

Growers Coop. Ass'n, 171 Ark. 1155, 287 S.W. 419 (1926).

Management of Funds.

Directors of cooperative marketing association organized under this chapter abused their discretion in failing to develop and maintain a rational balance between amounts paid preferred stockholders and active members and in failing to provide, maintain, and build the allocated reserve required by the articles of incorporation where action of board in effect denied owners of preferred stock assurance that their stock would be redeemed as provided in articles of incorporation while affording active members a profitable return. *Collie v. Little River Coop.*, 236 Ark. 725, 370 S.W.2d 62 (1963).

2-2-407. Members.

(a) Under the terms and conditions prescribed in its bylaws, an association may admit as members, or issue common stock only to, persons engaged in the production of the agricultural products to be handled by or through the association, including the lessees and tenants of land used for the production of agricultural products and any lessors and landlords who receive as rent part of the crop raised on the leased premises.

(b) If a member of a nonstock association is other than a natural person, the member may be represented by any individual, associate, officer, or member thereof, duly authorized in writing.

(c) An association organized under this subchapter may become a member or stockholder of any other association organized under this subchapter.

History. Acts 1921, No. 116, § 7; Pope's Dig., § 2292; A.S.A. 1947, § 77-907.

2-2-408. Articles of incorporation.

(a) Each association formed under this subchapter must prepare and file articles of incorporation setting forth:

- (1) The name of the association;
- (2) The purposes for which it is formed;
- (3) The place where its principal business will be transacted;
- (4) The term for which it is to exist, not exceeding fifty (50) years;
- (5)(A) The number of directors, which must be not fewer than five (5) and may be any number in excess thereof; and
- (B) The term of office of the directors;

(6)(A)(i) If organized without capital stock, whether the property rights and interest of each member shall be equal or unequal.

(ii) If unequal, the articles shall set forth the general rules applicable to all members by which the property rights and interests, respectively, of each member may and shall be determined and fixed.

(B) The association shall have the power to admit new members who shall be entitled to share in the property of the association with the old members, in accordance with the general rules.

(C) This provision of the articles of incorporation shall not be altered, amended, or repealed except by the written consent of the vote of three-fourths ($\frac{3}{4}$) of the members; and

(7)(A) If organized with capital stock, the amount of the stock and the number of shares into which it is divided and the par value thereof.

(B)(i) The capital stock may be divided into preferred and common stock.

(ii) If so divided, the articles of incorporation must contain a statement of the number of shares of stock to which preference is granted, the number of shares of stock to which no preference is granted, and the nature and extent of the preference and privileges granted to each.

(b)(1) The articles must be subscribed by the incorporators and acknowledged by one (1) of them before an officer authorized by the law of this state to take and certify acknowledgment of deeds and conveyances.

(2)(A) They shall be filed in accordance with the provisions of the general corporation law of this state.

(B) When so filed, the articles of incorporation or certified copies shall be received in all the courts of this state and other places as prima facie evidence of the facts contained therein and of the due incorporation of the association.

(3) A certified copy of the articles of incorporation shall also be filed with the Dean of the College of Agriculture of the University of Arkansas at Fayetteville and the Secretary of State.

History. Acts 1921, No. 116, § 8; Pope's *Business Corporation Act*, § 4-26-101 et seq.
 Dig., § 2293; A.S.A. 1947, § 77-908. *Business Corporation Act* of 1987, § 4-27-101 et seq.

Cross References. Business Corpora-

2-2-409. Amendments to articles.

(a) The articles of incorporation may be altered or amended at any regular meeting or at any special meeting called for that purpose.

(b) Amendments to the articles of incorporation when so adopted shall be certified to by the president and secretary of the association and shall be filed with the Secretary of State.

History. Acts 1921, No. 116, § 9; Pope's *Business Corporation Act*, § 4-27-101 et seq.
 Dig., § 2294; Acts 1961, No. 470, § 1;
 A.S.A. 1947, § 77-909.

2-2-410. Filing fees.

For filing articles of incorporation, an association organized under this subchapter shall pay five dollars (\$5.00), and for filing an amendment to the articles, it shall pay two dollars and fifty cents (\$2.50).

History. Acts 1921, No. 116, § 29; 1937, No. 351, § 3; Pope's Dig., § 2314; A.S.A. 1947, § 77-928.

2-2-411. Bylaws.

(a) Within thirty (30) days after its incorporation, each association incorporated under this subchapter must adopt a code of bylaws, not inconsistent with the powers granted by this subchapter, for its government and management.

(b) Each association under its bylaws may also provide for any or all of the following matters:

(1) The time, place, and manner of calling and conducting its meetings;

(2) The number of stockholders or members constituting a quorum;

(3) The right of members or stockholders to vote by proxy or by mail or by both, and the conditions, manner, form, and effect of these votes;

(4) The number of directors constituting a quorum;

(5) The qualifications, compensation, duties, and term of office of directors and officers; time of their election; and the mode and manner of giving notice thereof;

(6) Penalties for violations of the bylaws;

(7) The amount of entrance, organization, and membership fees, if any; the manner and method of collection of the fees; and the purposes for which they may be used;

(8)(A) The amount which each member or stockholder shall be required to pay annually or from time to time, if at all, to carry on the business of the association;

(B) The charge, if any, to be paid by each member or stockholder for services rendered by the association to him or her and the time of payment and the manner of collection; and

(C) The marketing contract between the association and its members or stockholders, which every member or stockholder may be required to sign; and

(9)(A) The number and qualification of members or stockholders of the association and the conditions precedent to membership or ownership of common stock;

(B) The method, time, and manner of permitting members to withdraw or the holders of common stock to transfer their stock;

(C) The manner of assignment and transfer of the interest of members and the shares of common stock;

(D) The conditions upon which the membership of any member shall cease;

(E) The automatic suspension of the rights of a member when he or she ceases to be eligible for membership in the association and the mode, manner, and effect of the expulsion of a member; and

(F)(i) The manner of determining the value of a member's interest and provision for its purchase by the association upon the death or withdrawal of a member or stockholder or upon the expulsion of a member or forfeiture of his or her membership or, at the option of the association, by a conclusive appraisal by the board of directors.

(ii) In case of withdrawal or expulsion of a member, the board of directors shall equitably and conclusively appraise his or her property interests in the association and shall fix the amount thereof in money, which shall be paid to him or her within one (1) year after the expulsion or withdrawal.

History. Acts 1921, No. 116, § 10; Pope's Dig., § 2295; Acts 1961, No. 470, § 2; A.S.A. 1947, § 77-910.

2-2-412. [Repealed.]

Publisher's Notes. This section, concerning amendment of articles or bylaws, was repealed by Acts 1987, No. 507, § 1.

The section was derived from Acts 1961, No. 470, § 3; A.S.A. 1947, § 77-910.1.

2-2-413. Regular and special meetings.

(a) In its bylaws, each association shall provide for one (1) or more regular meetings annually.

(b)(1) The board of directors shall have the right to call a special meeting at any time, and ten percent (10%) of the members or stockholders may file a petition stating the specific business to be brought before the association and demand a special meeting at any time.

(2) This meeting must be called by the directors.

(c)(1) Notice of all meetings together with a statement of the purposes thereof shall be mailed to each member at least ten (10) days prior to the meeting.

(2) The bylaws may require instead that the notice may be given by publication in a newspaper of general circulation published at the principal place of business of the association.

History. Acts 1921, No. 116, § 11; Pope's Dig., § 2296; A.S.A. 1947, § 77-911.

2-2-414. Board of directors.

(a)(1) The affairs of the association shall be managed by a board of not less than five (5) directors elected by the members or stockholders from their own number.

(2)(A)(i) The bylaws may provide that the territory in which the association has members shall be divided into districts and that the directors shall be elected according to the districts.

(ii) In this case, the bylaws shall specify the number of directors to be elected by each district and the manner and method of reapportioning the directors and of redistricting the territory covered by the association.

(B) The bylaws may provide that primary elections should be held in each district to elect the directors apportioned to the districts, and the result of all the primary elections must be ratified by the next regular meeting of the association.

(b)(1) The bylaws may provide that one (1) or more directors may be appointed by the Dean of the College of Agriculture of the University of Arkansas at Fayetteville or by the Secretary of State or any other public official or commission.

(2) The directors so appointed need not be members or stockholders of the association but shall have the same powers and rights as other directors.

(c)(1) An association may provide a fair remuneration for the time actually spent by its officers and directors in its service.

(2) No director during the term of his or her office shall be a party to a contract for profit with the association differing in any way from the business relations accorded regular members or holders of common stock of the association or to any other kind of contract differing from terms generally current in that district.

(d)(1) When a vacancy on the board of directors occurs other than by expiration of term, the remaining members of the board, by a majority vote, shall fill the vacancy unless the bylaws provide for an election of directors by district.

(2) In that case, the board shall immediately call a special meeting of the members or stockholders in that district to fill the vacancy.

History. Acts 1921, No. 116, § 12;
Pope's Dig., § 2297; A.S.A. 1947, § 77-912.

2-2-415. Officers.

(a) The board of directors shall elect from their number a president and one (1) or more vice presidents.

(b)(1) They shall also elect a secretary and treasurer, who need not be directors, and they may combine the two (2) latter offices and designate the combined office as secretary-treasurer.

(2)(A) The treasurer may be a bank or any depository, and as such shall not be considered as an officer but as a functionary of the board of directors.

(B) In such case, the secretary shall perform the usual accounting duties of the treasurer, excepting that the funds shall be deposited only as authorized by the board.

History. Acts 1921, No. 116, § 13; Pope's Dig., § 2298; A.S.A. 1947, § 77-913.

2-2-416. Removal of officer or director.

(a)(1) Any member may bring charges against an officer or director by filing the charges in writing with the secretary of the association, together with a petition signed by ten percent (10%) of the members, requesting the removal of the officer or director in question.

(2) The removal shall be voted upon at the next regular or special meeting of the association, and by a vote of a majority of the members the association may remove the officer or director and fill the vacancy.

(3)(A) The director or officer against whom the charges have been brought shall be informed in writing of the charges previous to the meeting and shall have an opportunity at the meeting to be heard in person or by counsel and to present witnesses; and

(B) The person or persons bringing the charges against him or her shall have the same opportunity.

(b)(1) In case the bylaws provide for election of directors by districts with primary elections in each district, then the petition for removal of a director must be signed by twenty percent (20%) of the members residing in the district from which he or she was elected.

(2) The board of directors must call a special meeting of the members residing in that district to consider the removal of the director.

(3) By a vote of the majority of the members of that district, the director in question shall be removed from office.

History. Acts 1921, No. 116, § 15; Pope's Dig., § 2300; A.S.A. 1947, § 77-915.

2-2-417. Certificates of membership or stock ownership.

(a) When a member of an association established without capital stock has paid his or her membership fee in full, he or she shall receive a certificate of membership.

(b)(1)(A) No association shall issue stock to a member until the stock has been fully paid for.

(B) The promissory notes of the members may be accepted by the association as full or partial payment.

(2) The association shall hold the stock as security for the payment of the note, but such retention as security shall not affect the member's right to vote.

(c) Except for debts lawfully contracted between him or her and the association, no member shall be liable for the debts of the association to an amount exceeding the sum remaining unpaid on his or her membership fee or his or her subscription to the capital stock, including any unpaid balances on any promissory notes given in payment thereof.

(d)(1) No stockholder of a cooperative association shall own more than one-twentieth ($\frac{1}{20}$) of the common stock of the association.

(2) An association in its bylaws may limit the amount of common stock which one (1) member may own to any amount less than one-twentieth ($\frac{1}{20}$) of the common stock.

(e) No member or stockholder shall be entitled to more than one (1) vote.

(f)(1) Any association organized with stock under this subchapter may issue preferred stock, with or without the right to vote.

(2) The stock may be redeemable or retirable by the association on such terms and conditions as may be provided for by the articles of incorporation and printed on the face of each certificate.

(g) The bylaws shall prohibit the transfer of the common stock of the association to persons not engaged in the production of the agricultural products handled by the association, and the restriction must be printed upon every certificate of stock subject thereto.

(h) At any time except when the debts of the association exceed fifty percent (50%) of its assets, the association may buy in or purchase its common stock at book value as conclusively determined by the board of directors and pay for it in cash within one (1) year thereafter.

History. Acts 1921, No. 116, § 14;
Pope's Dig., § 2299; A.S.A. 1947, § 77-914.

2-2-418. Matters referred to entire membership.

Upon demand of one-third ($\frac{1}{3}$) of the entire board of directors, any matter that has been approved or passed by the board must be referred to the entire membership or the stockholders for decision at the next special or regular meeting. A special meeting may be called for that purpose.

History. Acts 1921, No. 116, § 16;
Pope's Dig., § 2301; A.S.A. 1947, § 77-916.

2-2-419. Marketing contracts — Remedies.

(a)(1) The association and its members may make and execute marketing contracts requiring the members to sell, for any period of time not over ten (10) years, all or any specified part of their agricultural products or specified commodities exclusively to or through the association or any facilities to be created by the association.

(2) The contract may provide that the association may sell or resell the products of its members with or without taking title thereto and pay over to its members the resale price after deducting all necessary selling, overhead, and other costs and expenses, including:

(A) Interest on preferred stock, not exceeding eight percent (8%) per annum;

(B) Reserves for retiring the stocks, if any;

(C) Other proper reserves; and

(D) Interest not exceeding eight percent (8%) per annum upon common stock.

(b) The bylaws and the marketing contract may fix, as liquidated damages, specific sums to be paid by the member or stockholder to the association upon the breach by him or her of any provision of the marketing contract regarding the sale or delivery or withholding of products. They may further provide that the member will pay all costs, premiums for bonds, expenses, and fees in case any action is brought upon the contract by the association. Any such provision shall be valid and enforceable in the courts of this state.

(c)(1) In the event of any breach or threatened breach of the marketing contract by a member, the association shall be entitled to an injunction to prevent the further breach of the contract and to a decree of specific performance thereof.

(2) Pending the adjudication of an action and upon filing a verified complaint showing the breach or threatened breach and upon filing a sufficient bond, the association shall be entitled to a temporary restraining order and preliminary injunction against the member.

History. Acts 1921, No. 116, § 17;
Pope's Dig., § 2302; A.S.A. 1947, § 77-917.

CASE NOTES

ANALYSIS

Constitutionality.
Breach of Contract.

Constitutionality.

This section is not invalid as an attempt to enlarge the jurisdiction of the chancery court. *Arkansas Cotton Growers Coop. Ass'n v. Brown*, 168 Ark. 504, 270 S.W. 946 (1925), *supp. op.*, 168 Ark. 523, 270 S.W. 1119 (1925).

Breach of Contract.

The fact that officers of association breached the contract in certain respects did not absolve members from carrying out their contracts. *McCauley v. Arkansas Rice Growers Coop. Ass'n*, 171 Ark. 1155, 287 S.W. 419 (1926).

Cited: *Hardy Constr. Co. v. Arkansas State Hwy. & Transp. Dep't*, 324 Ark. 496, 922 S.W.2d 705 (1996).

2-2-420. Penalties for inducing breach of contract.

Any person or corporation whose officers or employees knowingly induce or attempt to induce any member or stockholder of an association organized under this subchapter to breach his or her marketing contract with the association or who maliciously and knowingly spread false reports about the finances or management of the association shall be guilty of a violation and subject to a fine of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for the offense and shall be liable to the association aggrieved in a civil suit in the penal sum of five hundred dollars (\$500) for each offense.

History. Acts 1921, No. 116, § 24; Pope's Dig., § 2309; A.S.A. 1947, § 77-924; Acts 2005, No. 1994, § 4.

Amendments. The 2005 amendment substituted "violation" for "misdemeanor."

CASE NOTES

Elements of Offense.

To render one purchasing rice from a member of a cooperative marketing association liable for a penalty prescribed in this section, it must appear the defendant

knowingly induced the member to sell rice which he or she had no right to sell under the marketing contract. *Loewer v. Arkansas Rice Growers' Coop. Ass'n*, 180 Ark. 484, 22 S.W.2d 17 (1929).

2-2-421. Exchange of shares for acquired interests.

Whenever an association organized under this subchapter with preferred capital stock shall purchase the stock or any property or any interest in any property of any person, firm, corporation, or association, it may discharge the obligations so incurred, wholly or in part, by exchanging for the acquired interest shares of its preferred capital stock to an amount which at par value would equal a fair market value of the stock or interest so purchased, as determined by the board of directors. In that case, the transfer to the association of the stock or interest purchased shall be equivalent to payment in cash for the shares of stock issued.

History. Acts 1921, No. 116, § 18; Pope's Dig., § 2303; A.S.A. 1947, § 77-918.

2-2-422. Annual report.

Each association formed under this subchapter shall prepare and make out an annual report on forms furnished by the Secretary of State and the State College of Agriculture of the University of Arkansas at Fayetteville, containing:

- (1) The name of the association;
- (2) Its principal place of business; and
- (3) A general statement of its business operations during the fiscal year, showing:

(A)(i) The amount of capital stock paid up and the number of stockholders of a stock association; or

(ii) The number of members and amount of membership fees received if a nonstock association;

(B) The total expenses of operations;

(C) The amount of its indebtedness or liability; and

(D) Its balance sheets.

History. Acts 1921, No. 116, § 19; Pope's Dig., § 2304; A.S.A. 1947, § 77-919.

2-2-423. Interest in other corporations.

(a) An association may organize, form, operate, own, control, have an interest in, own stock of, or be a member of any other corporation, with or without capital stock; and engage in preserving, drying, processing, canning, packing, ginning, compressing, storing, handling, shipping, utilizing, manufacturing, marketing, or selling of agricultural products handled by the association, or the by-products thereof.

(b)(1) If the corporations are warehousing corporations, they may issue legal warehouse receipts to the association or to any other person and the legal warehouse receipts shall be considered as adequate collateral to the extent of the current value of the commodity represented.

(2) In case the warehouse is licensed or licensed and bonded under the laws of this state or the United States, its warehouse receipt shall not be challenged or discriminated against because of ownership or control, wholly or in part, by the association.

History. Acts 1921, No. 116, § 21;
Pope's Dig., § 2306; A.S.A. 1947, § 77-921.

2-2-424. Agreements with other associations.

(a) Upon resolution adopted by its board of directors, any association may enter into all necessary and proper contracts and agreements and make all necessary and proper stipulations, agreements, contracts, and arrangements with any other cooperative corporation or association formed in this or any other state for the cooperative and more economical carrying on of its business or any part thereof.

(b) By agreement between them, any two (2) or more associations may unite in employing and using or may separately employ and use the same methods, means, and agencies for carrying on and conducting their respective businesses.

History. Acts 1921, No. 116, § 22;
Pope's Dig., § 2307; A.S.A. 1947, § 77-922.

2-2-425. Existing entities may participate.

(a)(1) By a majority vote of its stockholders or members, any corporation or association organized under previous existing statutes may be brought under the provisions of this subchapter by limiting its membership and adopting the other restrictions as provided in this subchapter.

(2) It shall make out in duplicate a statement signed and sworn to by its directors upon forms supplied by the Secretary of State to the effect that the corporation or association has by a majority vote of its stockholders or members decided to accept the benefits and be bound by the provisions of this subchapter.

(3) Articles of incorporation shall be filed as required in § 2-2-408, except that they shall be signed by the members of the board of directors.

(b) The filing fee shall be the same as for filing an amendment to articles of incorporation.

History. Acts 1921, No. 116, § 23; Pope's Dig., § 2308; A.S.A. 1947, § 77-923.

2-2-426. Arrangements not in restraint of trade.

No association organized under this subchapter shall be deemed to be a combination in restraint of trade or an illegal monopoly or an attempt to lessen competition or fix prices arbitrarily. The marketing contracts or agreements between the association and its members or any agreements authorized in this subchapter are not illegal or in restraint of trade.

History. Acts 1921, No. 116, § 25; Pope's Dig., § 2310; A.S.A. 1947, § 77-925.

2-2-427. Tax exemption.

Each association organized under this subchapter shall be exempt from all franchise or license taxes.

History. Acts 1921, No. 116, § 28; 1937, No. 351, § 2; Pope's Dig., § 2313; A.S.A. 1947, § 77-927.

2-2-428. General corporation laws.

The provisions of the general corporation laws of this state and all powers and rights thereunder shall apply to the associations organized under this subchapter, except where the provisions are in conflict with or inconsistent with the express provisions of this subchapter.

History. Acts 1921, No. 116, § 27; Pope's Dig., § 2312; A.S.A. 1947, § 77-926.

tion Act, § 4-26-101 et seq.

Business Corporation Act of 1987, § 4-27-101 et seq.

Cross References. Business Corpora-

CASE NOTES

Venue.

Corporation laws apply to agricultural cooperative associations, and thus venue is proper in either the county in which the association's principal place of business is

located or in the county in which one of its branch offices is located. *Two Bros. Farm v. Riceland Foods, Inc.*, 57 Ark. App. 25, 940 S.W.2d 889 (1997).

2-2-429. Conflicting laws.

Any provisions of law which are in conflict with this subchapter shall not be construed as applying to the associations provided for in this subchapter.

History. Acts 1921, No. 116, § 20; Pope's Dig., § 2305; A.S.A. 1947, § 77-920.

2-2-430. Conversion to nonprofit corporate status.

(a) An association formed under this subchapter may elect to be governed by the provisions of the Arkansas Nonprofit Corporation Act of 1993, § 4-33-101 et seq., by amending and restating its articles of incorporation to provide that it shall be so governed.

(b) The election shall be approved upon receiving the affirmative vote of at least two-thirds ($\frac{2}{3}$) of the votes cast at any regular meeting, or at any special meeting called for that purpose, in which members holding not less than fifty percent (50%) of the voting power of the association are represented in person or by proxy, but the election once made shall be irrevocable.

(c) The amended and restated articles of incorporation shall comply with and shall be filed pursuant to the provisions of the Arkansas Nonprofit Corporation Act of 1993, § 4-33-101 et seq., and thereafter the association shall be governed by the Arkansas Nonprofit Corporation Act of 1993, § 4-33-101 et seq.

History. Acts 1997, No. 521, § 1.

CHAPTER 3

ARKANSAS AGRICULTURAL FOREIGN INVESTMENT

SECTION.

- 2-3-101. Title.
- 2-3-102. Definitions.
- 2-3-103. Registration of foreign interest in agricultural land.
- 2-3-104. Right to security interests.
- 2-3-105. Land acquired by lien.
- 2-3-106. Proceedings upon failure to register.

SECTION.

- 2-3-107. Private right of enforcement.
- 2-3-108. Exceptions generally.
- 2-3-109. Rights in nonfarm lands.
- 2-3-110. Agricultural land used for non-farming purposes and mineral leases.

Effective Dates. Acts 1979, No. 1096, § 14: Apr. 19, 1979. Emergency clause provided: "It has been found and is hereby declared that a record should be kept of the acquisition by foreign parties of Arkansas agricultural land since such acquisition may constitute an undesirable for-

eign influence upon the people of this state and the welfare of its people and may contribute to the deterioration of the family farm system and the rural community and may result in abuse to Arkansas farm land through improper conservation measures. Therefore, an emergency is

hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall

be in full force and effect from and after its passage and approval."

RESEARCH REFERENCES

U. Ark. Little Rock L.J. DeSimone,
Survey of Property Law, 3 U. Ark. Little
Rock L.J. 286.

2-3-101. Title.

This chapter may be cited as the "Arkansas Agricultural Foreign Investment Act".

History. Acts 1979, No. 1096, § 1;
A.S.A. 1947, § 77-2201.

2-3-102. Definitions.

As used in this chapter, unless the context otherwise requires:

(1) "Agricultural land" means any Arkansas land which is outside the corporate limits of a municipality and is used or capable, without substantial modification to the character of the land, of use for agricultural, forestry, or timber production, but does not include oil, gas, and all other minerals, including coal, lignite, brine, and all minerals known and recognized as commercial minerals underlying the land;

(2) "Foreign government" means any government other than the federal government or any government of a state or a political subdivision of a state;

(3) "Party" means any individual, corporation, company, association, firm, partnership, society, joint-stock company, trust, estate, or any other legal entity; and

(4) "Foreign party" means:

(A) Any individual who is not a citizen of the United States and who is not a resident of some state, territory, or possession of the United States;

(B) Any foreign government;

(C) Any party, other than an individual or a government, which is created or organized under the laws of a foreign government or which has its principal place of business located outside the United States;

(D) Any party other than an individual or a government:

(i) Which is created or organized under the laws of any state; and

(ii) In which a significant interest is directly or indirectly held or in which not insubstantial control is directly or indirectly held or is capable of being exercised by:

(a) Any individual referred to in subdivision (4)(A) of this section;

(b) Any foreign government;

(c) Any party referred to in subdivision (4)(C) of this section;

(d) Any combination of such individuals, parties, or government; and

(E) Any agent, trustee, or other fiduciary of a person or entity enumerated in this subdivision (4).

History. Acts 1979, No. 1096, § 2;
A.S.A. 1947, § 77-2202.

2-3-103. Registration of foreign interest in agricultural land.

(a)(1)(A) When after April 19, 1979, any foreign party acquires any interest in agricultural land in Arkansas by grant, purchase, adverse possession, devise, descent, or in any other manner or any agent, trustee, or fiduciary acquires title to agricultural land in Arkansas on behalf of a foreign party, the foreign party or agent, trustee, or fiduciary shall register the ownership in the office of the circuit clerk in the county in which the land is located within sixty (60) days after the acquisition.

(B) The registration shall include a description of the agricultural lands acquired and the name and business address of the foreign party which acquired the lands or in whose behalf the lands were acquired.

(2) When the acquisition of lands by a foreign party is registered with the circuit clerk as required in this section, the clerk shall record the acquisition in an appropriate foreign land ownership record book to be maintained by him or her. The clerk shall forthwith remit a copy of the registration to the Secretary of State, who shall likewise maintain a record of all registrations made pursuant to the provisions of this chapter.

(b) Any foreign party who obtains a lease of agricultural land for a term of ten (10) years or longer or a lease renewable by option for terms which, if the options were all exercised, would total ten (10) years shall be deemed to have acquired agricultural land within the meaning of this chapter.

(c) Any party who acquires or holds any interest in agricultural land in violation of this chapter shall continue to violate this chapter for as long as he or she holds an interest in the land.

(d) Nothing in this chapter shall prevent a foreign party holding a lien or other interest in agricultural land prior to April 19, 1979, from taking a valid title to the land by the enforcement of the lien or other existing interest, but any such interest shall be registered as required in this chapter.

History. Acts 1979, No. 1096, § 3;
A.S.A. 1947, § 77-2203.

2-3-104. Right to security interests.

Any foreign party shall have the right to make loans of money and to take and accept mortgages or other security interests upon agricultural land in Arkansas to secure the payment of loans. The foreign party may

acquire fee ownership of the land upon a foreclosure or other legal enforcement of the security interest, provided the foreign party acquiring ownership registers the ownership as required in this chapter.

History. Acts 1979, No. 1096, § 4;
A.S.A. 1947, § 77-2204.

2-3-105. Land acquired by lien.

(a) Any foreign party who acquires agricultural land by enforcement of a lien resulting from a transaction occurring after April 19, 1979, shall, within sixty (60) days of the acquisition, register the ownership as required in this chapter.

(b) In the event of failure to register as required in this chapter, proceedings under § 2-3-106 or § 2-3-107 shall be commenced.

History. Acts 1979, No. 1096, § 11;
A.S.A. 1947, § 77-2211.

2-3-106. Proceedings upon failure to register.

(a) Any recorder of deeds, tax assessor, or other public official who shall learn that a foreign party has acquired agricultural land in Arkansas after April 19, 1979, and has not registered as required in this chapter or otherwise holds agricultural land in violation of this chapter shall report the violation to the Attorney General.

(b)(1) Upon receiving notice under subsection (a) of this section, or otherwise in his or her discretion, the Attorney General shall institute an action in the Pulaski County Circuit Court or in the circuit court of any county in which any portion of the agricultural land acquired or held in violation of § 2-3-103 is located.

(2) The Attorney General shall file a notice of the pendency of the action with the recorder of deeds of each county in which any portion of the agricultural land is located.

(c)(1) If the court finds that the agricultural land has been acquired or is held in violation of this chapter, the court shall enter a declaratory judgment of the violation and order that the agricultural land be divested to a party other than another foreign party within two (2) years of the date of the order.

(2)(A) The court may also assess against the foreign party a civil penalty for a knowing violation of this chapter of up to twenty-five percent (25%) of the then fair market value of the agricultural land.

(B) The penalty assessed shall become a lien against the agricultural land.

(d)(1) Upon the entry of a declaratory judgment of a violation and an order of divestiture, the Attorney General shall cause a copy of the order to be filed with the recorder of deeds of each county in which any portion of the agricultural land is located.

(2)(A) The order of divestiture shall be a covenant running with the agricultural land against any foreign party, grantee, or assignee.

(B) Any foreign party who shall acquire any portion of the agricultural land within the two-year divestiture period specified in the order shall be required to divest within the two-year period.

(e) Any agricultural land which is not divested within the time prescribed by an order pursuant to subsection (c) of this section shall be ordered sold at public sale in the manner prescribed by law for the foreclosure of a mortgage on real estate for default in payment.

History. Acts 1979, No. 1096, § 5; A.S.A. 1947, § 77-2205; Acts 2005, No. 1962, § 2.

Publisher's Notes. Pursuant to § 14-14-1301, the clerk of the circuit court is ex officio recorder.

Amendments. The 2005 amendment, in (b)(1) inserted "or her," substituted "Pulaski County Circuit Court" for "Circuit Court or Chancery Court of Pulaski County," and deleted "or chancery" following "circuit."

2-3-107. Private right of enforcement.

If the Attorney General refuses to bring an action provided for or authorized by this chapter, any person claiming a violation therefor, upon notice to the Attorney General, may apply to the court for leave to bring the action in his or her own name and may bring the action if leave therefor is granted.

History. Acts 1979, No. 1096, § 6; A.S.A. 1947, § 77-2206.

2-3-108. Exceptions generally.

(a) This chapter shall not apply to agricultural land owned by a foreign party on April 19, 1979, while the land is held by the foreign party, nor shall this chapter apply to any alien while a bona fide resident of the United States or one of its territories or possessions.

(b) Should any alien owning agricultural land in Arkansas cease to be a bona fide resident of the United States or one of its territories or possessions, the alien shall register as required in this chapter within two (2) years after ceasing to be a bona fide resident.

(c) Agricultural land held by a nonresident alien over two (2) years after ceasing to be a resident alien shall be subject to the proceedings set forth in §§ 2-3-106 and 2-3-107.

History. Acts 1979, No. 1096, § 7; A.S.A. 1947, § 77-2207.

2-3-109. Rights in nonfarm lands.

Except as provided in this chapter, all aliens, whether or not residents of the United States, shall be capable of acquiring by grant, purchase, adverse possession, devise, or descent any interest in any real estate except agricultural land, as defined in § 2-3-102, and of owning, holding, devising, or alienating it and shall incur the like duties and liabilities in relation thereto as if they were citizens of the United States and residents of Arkansas.

History. Acts 1979, No. 1096, § 9;
A.S.A. 1947, § 77-2209.

2-3-110. Agricultural land used for nonfarming purposes and mineral leases.

(a) The restrictions set forth in this chapter shall not apply to agricultural land acquired by a foreign party for immediate or potential use for nonfarming purposes.

(b)(1) Any foreign party who acquires agricultural land for nonfarming purposes shall file with the Secretary of State a declaration of intent as to the intended use of the land, the foreign party's identity, and a legal description of the land acquired.

(2) The filings shall be made within sixty (60) days of the date of transfer of title to the land.

(c)(1) Any foreign party who acquires agricultural land pursuant to subsection (a) of this section and fails to put the land to the use described in the declaration of intent or subsequently to complete all steps necessary to do so within five (5) years of the filing of declaration shall register as required in this chapter.

(2) Failure to register ownership shall be subject to actions as provided in §§ 2-3-106 and 2-3-107.

(d) The restrictions set forth in this chapter shall not apply and no reporting requirement attaches to leases or other conveyances granting the right to explore for and produce the oil, gas, and all other minerals, including coal, lignite, brine, and all minerals known and recognized as commercial minerals underlying the land, and oil, gas, coal, lignite, brine, and other mineral or royalty interests regardless of type or duration, easements, or tracts of land reasonably necessary for the extraction of oil, gas, and all other minerals, including coal, lignite, brine, and all minerals known and recognized as commercial minerals underlying the land.

History. Acts 1979, No. 1096, § 10;
A.S.A. 1947, § 77-2210.

CHAPTER 4

AGRICULTURAL OPERATIONS AS NUISANCES

SECTION.

2-4-101. Purpose.

2-4-102. Definitions.

2-4-103. Applicability to contracts.

2-4-104. [Repealed.]

2-4-105. Local ordinances void.

SECTION.

2-4-106. Actions for injuries or damages
not affected.

2-4-107. Operation not to become nui-
sance.

2-4-108. Liberal construction.

Effective Dates. Acts 1981, No. 301,
§ 10: Mar. 3, 1981. Emergency clause pro-

vided: "It is hereby found and determined
by the General Assembly that under cer-

tain circumstances, an agricultural facility or the operation thereof may be declared a nuisance as a result of change in conditions in the area around the facility occurring after the facility has been in operation for a long period of time; that to permit any such facility which was not a nuisance when established to be declared a nuisance and forced to cease operations because of change in conditions in the locality and after the facility has been in operation for a long period of time is not only unfair to the owners, operators and

employees of such plant but is highly detrimental to the economic growth and development of the state; that this act is designed to correct this situation and at the same time to protect the public health and preserve individual rights. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

RESEARCH REFERENCES

Ark. L. Notes. Malone, Farmland Preservation, 1985 Ark. L. Notes 73.

Ark. L. Rev. Noble and Looney, The Emerging Legal Framework for Animal Agricultural Waste Management in Arkansas, 47 Ark. L. Rev. 159.

U. Ark. Little Rock L.J. Legislative Survey, Property, 4 U. Ark. Little Rock L.J. 607.

2-4-101. Purpose.

It is the declared policy of the state to conserve, protect, and encourage the development and improvement of its agricultural and forest lands and other facilities for the production of food, fiber, and other agricultural and silvicultural products. When nonagricultural land uses extend into agricultural areas, agricultural operations often become the subject of nuisance suits. As a result, agricultural operations are sometimes forced to cease operations. Many are discouraged from making investments in farm or other agricultural improvements. It is the purpose of this chapter to reduce the loss to the state of its agricultural resources by limiting the circumstances under which agricultural operations may be deemed to be a nuisance.

History. Acts 1981, No. 301, § 1; A.S.A. 1947, § 34-120; Acts 2005, No. 2257, § 1.

Amendments. The 2005 amendment substituted "and forest lands" for "land"

and "fiber, and other agricultural and silvicultural" for "and other agricultural" in the first sentence.

2-4-102. Definitions.

As used in this chapter:

(1) "Agricultural operation" or "farming operation" means an agricultural, silvicultural, or aquacultural facility or pursuit conducted, in whole or in part, including:

(A) The care and production of livestock and livestock products, poultry and poultry products, apiary products, and plant and animal production for nonfood uses;

(B) The planting, cultivating, harvesting, and processing of crops and timber; and

(C) The production of any plant or animal species in a controlled freshwater or saltwater environment; and

(2) "Agriculture" includes agriculture, silviculture, and aquaculture.

History. Acts 1981, No. 301, § 2; A.S.A. 1947, § 34-121; Acts 2005, No. 2257, § 2.

Amendments. The 2005 amendment rewrote this section.

Publisher's Notes. As passed, Acts 2005, No. 2257, contained two sections designated as subdivision 2.

2-4-103. Applicability to contracts.

This chapter shall not be construed to invalidate any contracts heretofore made, but insofar as contracts are concerned shall be applicable only with respect to contracts and agreements made subsequent to March 3, 1981.

History. Acts 1981, No. 301, § 6; A.S.A. 1947, § 34-125.

2-4-104. [Repealed.]

Publisher's Notes. This section, concerning nonapplicability to certain agricultural facilities, was repealed by Acts

2005, No. 2257, § 3. The section was derived from Acts 1981, No. 301, § 7; A.S.A. 1947, § 34-126.

2-4-105. Local ordinances void.

Any and all ordinances adopted by any municipality or county in which an agricultural operation is located making or having the effect of making the agricultural operation or any agricultural facility or its appurtenances a nuisance or providing for an abatement of the agricultural operation or the agricultural facility or its appurtenances as a nuisance in the circumstances set forth in this chapter are void and shall have no force or effect.

History. Acts 1981, No. 301, § 5; A.S.A. 1947, § 34-124; Acts 2005, No. 2257, § 4.

substituted "operation is" for "facility is" and "agricultural operation or any" for "operation of any."

Amendments. The 2005 amendment

2-4-106. Actions for injuries or damages not affected.

The provisions of this chapter shall not affect or defeat the right of any person, firm, or corporation to recover damages for any injuries or damages sustained by them on account of any pollution of or change in the condition of the waters of any stream or on account of any overflow of the lands of any person, firm, or corporation.

History. Acts 1981, No. 301, § 4; A.S.A. 1947, § 34-123.

2-4-107. Operation not to become nuisance.

(a) An agricultural operation or its facilities or appurtenances shall not be or become a public or private nuisance as a result of any changed conditions in and about the locality after it has been in operation for a period of one (1) year or more when the agricultural operation or its facilities or appurtenances were not a nuisance at the time the agricultural operation began.

(b)(1) Except as provided in this section, an agricultural operation shall not be found to be a public or private nuisance if the agricultural operation alleged to be a nuisance employs methods or practices that are commonly or reasonably associated with agricultural production.

(2) An agricultural operation that employs methods or practices that are commonly or reasonably associated with agricultural production shall not be found to be a public or private nuisance as a result of any of the following activities or conditions:

(A) Change in ownership or size;

(B) Nonpermanent cessation or interruption of farming;

(C) Participation in any government-sponsored agricultural program;

(D) Employment of new technology; or

(E) Change in the type of agricultural product produced.

(c)(1) Notwithstanding any other provision of this section to the contrary, an agricultural operation shall not be found to be a public or private nuisance if the agricultural operation:

(A) Was established prior to the commencement of the use of the area surrounding the agricultural operation for nonagricultural activities; and

(B) Employs methods or practices that are commonly or reasonably associated with agricultural production.

(2) Employment of methods or practices that are commonly or reasonably associated with agricultural production or are in compliance with any state or federally issued permit shall create a rebuttable presumption that an agricultural operation is not a nuisance.

(d) The court may award expert fees, reasonable court costs, and reasonable attorney's fees to the prevailing party in any action brought to assert that an agricultural operation is a public or private nuisance.

History. Acts 1981, No. 301, § 3; A.S.A. 1947, § 34-122; Acts 2005, No. 2257, § 5.

Amendments. The 2005 amendment substituted, in (a), "operation or its facilities or appurtenances" for "facility, its

appurtenances, or the operation thereof" and "agricultural operation or its facilities or appurtenances were" for "facility, its appurtenances, or the operation thereof was"; and added (b)-(d).

2-4-108. Liberal construction.

This chapter is remedial in nature and shall be liberally construed to effectuate its purposes.

History. Acts 2005, No. 2257, § 2[6]. 2005, No. 2257, contained two sections
Publisher's Notes. As passed, Acts designated as 2.

CHAPTER 5

DOMESTIC FISH FARMING

SUBCHAPTER.

1. GENERAL PROVISIONS.
 2. COMMERCIAL BAIT AND ORNAMENTAL FISH ACT.
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Effective Dates. Acts 1961, No. 166, § 5: Mar. 6, 1961. Emergency clause provided: "It is hereby found and determined by the General Assembly that many of the laws of this state are not clear as to the definition of fish farming, and that confusion often arises in interpreting many of such laws because of the lack of clarity as to the definition of the term 'fish farming'

and that the immediate passage of this act is necessary to clarify the definition of such term. Therefore, an emergency is hereby declared to exist and this act, being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 2-5-101. Legislative intent.
2-5-102. Definition.

SECTION.

- 2-5-103. Game and Fish Commission not affected.

2-5-101. Legislative intent.

In recognition of the fact that domestic fish farming has become an important part of the agricultural economy of this state, the General Assembly determines and declares that whenever any of the statutes, laws, or regulations promulgated pursuant thereto shall use any of the following terms, the terms so used and when used shall be deemed and construed to include within the common or statutory definition the following:

- (1) "Agriculture" or "agricultural pursuit" or any similar term means the cultivation, growing, harvesting, or marketing of domesticated fish;
- (2) "Cultivated crop" means domesticated fish which are grown, managed, or harvested on an annual, semiannual, biennial, or short-interval basis; and
- (3) "Livestock" means domesticated fish which are grown, managed, harvested, or marketed as a cultivated crop.

History. Acts 1961, No. 166, § 1; A.S.A. 1947, § 78-1801.

2-5-102. Definition.

As used in this subchapter, unless the context otherwise requires, “domesticated fish” means any fish that are spawned and grown, managed, harvested, and marketed on an annual, semiannual, bien-nial, or short-term basis in privately owned waters as privately owned waters are defined in § 15-43-301.

History. Acts 1961, No. 166, § 2; A.S.A. 1947, § 78-1802.

2-5-103. Game and Fish Commission not affected.

Nothing in this subchapter shall be interpreted or construed to affect, change, or alter any of the powers or controls over fish and wildlife in this state vested in the Arkansas State Game and Fish Commission under Arkansas Constitution, Amendment 35.

History. Acts 1961, No. 166, § 3; A.S.A. Game and Fish Commission, § 15-41-102 et seq.
Cross References. Arkansas State

SUBCHAPTER 2 — COMMERCIAL BAIT AND ORNAMENTAL FISH ACT

SECTION.	SECTION.
2-5-201. Title.	2-5-205. Certificates.
2-5-202. Purpose.	2-5-206. Fees.
2-5-203. Definitions.	2-5-207. Unlawful acts — Penalties —
2-5-204. Powers and duties of State Plant Board.	Revocation of certificate.
	2-5-208. Intergovernmental cooperation.

Cross References. Commercial Bait and Ornamental Fish Fund, § 19-6-801.

2-5-201. Title.

This subchapter shall be known and may be cited as the “Commercial Bait and Ornamental Fish Act”.

History. Acts 2005, No. 1449, § 1.

2-5-202. Purpose.

The purpose of this subchapter is to:
(1) Establish a voluntary certification program to provide high quality farm-raised bait and ornamental fish free of certain diseases, undesirable plants, undesirable animals, and other contaminants deemed injurious to the fish or fisheries;

- (2) Conduct programs to promote the use and sale of certified bait and ornamental fish raised in Arkansas; and
- (3) Provide state oversight of and funding from the beneficiaries of the program.

History. Acts 2005, No. 1449, § 1.

2-5-203. Definitions.

As used in this subchapter:

- (1) "Board" means the State Plant Board; and
- (2) "Person" means an individual, partnership, limited liability company, corporation, association, or two (2) or more individuals having a joint or common interest.

History. Acts 2005, No. 1449, § 1.

2-5-204. Powers and duties of State Plant Board.

(a) The State Plant Board shall:

- (1) Administer this subchapter and the Commercial Bait and Ornamental Fish Fund;
- (2) Certify the commercial bait and ornamental fish that meet the standards and qualifications of the board under this subchapter;
- (3) Investigate methods of production and the occurrence of certain diseases, undesirable plants, undesirable animals, and other contaminants of commercial bait and ornamental fish and fisheries;
- (4) Conduct marketing programs to promote the use and sale of certified bait and ornamental fish raised in Arkansas; and
- (5)(A) Promulgate all rules and regulations the board considers necessary or desirable to implement this subchapter.
(B) The board shall establish in its rules and regulations the management practices, testing procedures, and appropriate science criteria required for certification under this subchapter.
- (b) The board may authorize the Director of the State Plant Board to appoint any deputy the board considers necessary to implement this subchapter.

History. Acts 2005, No. 1449, § 1.

Cross References. Commercial Bait and Ornamental Fish Fund, § 19-6-801.

2-5-205. Certificates.

- (a) A person that has met the standards and qualifications established by the State Plant Board under this subchapter shall receive from the board a commercial bait and ornamental fish certificate.
- (b) The certificate shall be in the form prescribed by the board and shall attest that the commercial bait and ornamental fish covered by

the certificate have met the standards and qualifications established by the board under this subchapter.

(c) The certificate shall be displayed only by a person who is certified under this subchapter.

History. Acts 2005, No. 1449, § 1.

2-5-206. Fees.

(a) The State Plant Board may prescribe application, certification, and other fees to cover the costs of inspection, certification, and marketing under this subchapter.

(b) All fees collected under this subchapter shall be deposited into the Commercial Bait and Ornamental Fish Fund to be used by the board to administer this subchapter.

History. Acts 2005, No. 1449, § 1.

Cross References. Commercial Bait and Ornamental Fish Fund, § 19-6-801.

2-5-207. Unlawful acts — Penalties — Revocation of certificate.

(a) It is unlawful for any person to:

(1) Use the term “Arkansas certified” or any similar term concerning the quality of bait or ornamental fish without the proper certification from the State Plant Board;

(2) Falsely advertise or represent any bait or ornamental fish as being certified by the board;

(3) Use any emblem, label, or language for the purpose of misleading a person into believing that any bait or ornamental fish has been certified by the board when the certification has not been obtained;

(4) Misuse any tag, label, or certificate issued by the board;

(5) Obtain or attempt to obtain the certification of any bait or ornamental fish by making a false statement or misrepresentation to the board or to the board’s inspectors, deputies, or agents;

(6) Violate any rule or regulation of the board under this subchapter; or

(7) Violate any agreement made as a condition for receiving a certificate.

(b) Any person who pleads guilty or nolo contendere to or is found guilty of violating this section is guilty of a violation and shall be punished by a fine of not less than twenty-five dollars (\$25.00) nor more than five hundred dollars (\$500) for each offense.

(c)(1) A certificate issued under this subchapter may be revoked by the Director of the State Plant Board after a hearing before the director, regardless of whether a prosecution is commenced.

(2)(A) Any person whose certificate is revoked by the director is entitled to an appeal to the board.

(B) The decision of the board on appeal is final.

History. Acts 2005, No. 1449, § 1; substituted "violation" for "misdemeanor" in (b), and made stylistic changes.

Amendments. The 2007 amendment

2-5-208. Intergovernmental cooperation.

In administering this subchapter, the State Plant Board shall cooperate to the fullest extent possible with other agencies of the state and the federal government.

History. Acts 2005, No. 1449, § 1; substituted "shall cooperate" for "may cooperate."

Amendments. The 2007 amendment

CHAPTER 6

CATFISH PROCESSOR FAIR PRACTICES ACT

SECTION.

- 2-6-101. Title.
- 2-6-102. Purpose.
- 2-6-103. Definitions.
- 2-6-104. Administration.
- 2-6-105. Registration and suspension — Exception.
- 2-6-106. Unlawful practices — Penalties.
- 2-6-107. Purchase methods — Delays.
- 2-6-108. [Repealed.]
- 2-6-109. Receivership — Petition — Assets.
- 2-6-110. Receivership — Plan for disposition of catfish.
- 2-6-111. Receivership — Hearings on plan — Notice — Service.
- 2-6-112. Receivership — Notification to weigh ticket holders.
- 2-6-113. Receivership — Publication of notification of receiver's appointment.

SECTION.

- 2-6-114. Receivership — Designee — Duties of director.
- 2-6-115. Receivership — Applicability of administrative procedures.
- 2-6-116. Receivership — Sureties.
- 2-6-117. Receivership — Notice of claims filing deadline.
- 2-6-118. Receivership — Sale of processed catfish — Merchandiser.
- 2-6-119. Receivership — Distribution to producers.
- 2-6-120. Receivership — Continued operation of business.
- 2-6-121. Receivership — Reimbursement.
- 2-6-122. Receivership — Proceeds — Termination.
- 2-6-123. Receivership — Final report.

Effective Dates. Acts 1987, No. 365, § 11: July 1, 1987.

Acts 1989 (3rd Ex. Sess.), No. 53, § 10: Nov. 16, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that the Catfish Processors Fair Practices Act of 1987 is in need of strengthening in order to grant additional authority to the State Plant Board to protect Arkansas catfish producers from unfair practices; that this Act

grants such authority; and that this Act should go into effect immediately in order to provide additional protection to Arkansas catfish producers as soon as possible. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

2-6-101. Title.

This chapter shall be known and may be cited as the "Arkansas Catfish Processor Fair Practices Act of 1987".

History. Acts 1987, No. 365, § 1.

CASE NOTES

Cited: Jackson v. Swift-Eckrich, 830 F. Supp. 486 (W.D. Ark. 1993).

2-6-102. Purpose.

The General Assembly finds that a burden on and an obstruction to intrastate commerce in the catfish farming industry is caused when payment is not made for the catfish and that these arrangements are contrary to the public interest. This chapter is intended to remedy this burden on and obstruction to intrastate commerce in catfish and to protect the public interest.

History. Acts 1987, No. 365, § 3.

2-6-103. Definitions.

As used in this chapter:

- (1) "Board" means the State Plant Board;
- (2) "Capable of use as human food" means and applies to any catfish or part or product of any catfish unless it is denatured or otherwise identified as required by regulations prescribed by the board to deter its use as human food, or unless it is naturally inedible by humans;
- (3) "Cash sale" means a sale in which the seller does not expressly extend credit to the buyer;
- (4) "Catfish" means any species of the scientific order Ostariophysida, family Ictaluridae;
- (5) "Class A registrant" means any catfish processor who purchases at least fifty thousand dollars (\$50,000) worth of catfish annually from catfish producers;
- (6) "Direct retail sale" means the sale of catfish products directly to the consumer;
- (7) "Director" means the Director of the State Plant Board or his or her designee;
- (8) "Owner" means a person or a producer that owns an equity interest, directly or indirectly, in a catfish processor;
- (9) "Person" includes any individual, partnership, corporation, and association, or other legal entity;
- (10) "Processor" means any person engaged in handling, storing, preparing, manufacturing, packing, or holding catfish products;
- (11) "Producer" means any person engaged in the business of producing catfish by any method;

(12) "Product" means any catfish product capable of use as human food which is made wholly or in part from any catfish or portion thereof; and

(13) "Secured party" means a lender who has a perfected security interest pursuant to the Uniform Commercial Code, § 4-1-101 et seq., in the catfish being sold.

History. Acts 1987, No. 365, § 4; 1989 (3rd Ex. Sess.), No. 53, § 1; 2003, No. 128, § 1.

2-6-104. Administration.

(a) This chapter shall be administered by the State Plant Board.

(b) The board is authorized to promulgate such rules and regulations as may be necessary for the efficient enforcement of this chapter, including the establishment of reasonable fees for registering with the board.

History. Acts 1987, No. 365, §§ 2, 8; 1989 (3rd Ex. Sess.), No. 53, § 2.

2-6-105. Registration and suspension — Exception.

(a)(1) Except as provided in subsection (e) of this section, every catfish processor in the state shall register with the State Plant Board.

(2) Applications for registration as a catfish processor under this chapter shall be made on forms prescribed by the Director of the State Plant Board.

(3) Every application is to be accompanied by an application fee of one hundred fifty dollars (\$150), a certified financial statement in a form prescribed by the director, and any further information the director may by regulation require.

(b) The board shall promulgate such rules and regulations as necessary to secure the performance of catfish purchasing obligations.

(c) Whenever, after due notice and hearing, the board finds any registrant is insolvent or has violated any provisions of this chapter, it may issue an order suspending the registrant for a reasonable specified period. The order of suspension shall take effect within five (5) days unless suspended, modified, or set aside by the board or a court of competent jurisdiction.

(d) If the board finds any processor is insolvent, is issuing invalid or insufficient checks, or is causing a breach of contract with the producer by failure to pay the producer in accordance with the contract, the board shall issue an order requiring the processor to cease and desist from purchasing catfish except under such conditions as the board may prescribe to effectuate the purposes of this chapter.

(e) Those processors whose average annual purchases from catfish producers do not exceed one hundred thousand dollars (\$100,000) shall be exempt from the provisions of this section.

History. Acts 1987, No. 365, § 6; 1989 (3rd Ex. Sess.), No. 53, § 3; 1995, No. 190, § 1; 1995, No. 191, § 1.

2-6-106. Unlawful practices — Penalties.

(a)(1) With respect to catfish or catfish products, it shall be unlawful for any processor to engage in or use any unfair, unjustly discriminatory, or deceptive practice.

(2) If any person subject to this chapter violates any of the provisions of this chapter or of any order of the State Plant Board under this chapter relating to the purchase, sale, or handling of catfish, he or she shall be liable to the person injured for the full amount of damages sustained in consequence of the violation.

(b) This liability may be enforced either by complaint to the board or by suit in any circuit court of competent jurisdiction. This section shall not in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this section are in addition to those remedies.

(c) The board is authorized to apply for and the court is authorized to grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this chapter or any rule or regulation promulgated under this chapter, notwithstanding the existence of other remedies at law. The injunction shall be issued without bond.

(d) The board may assess civil penalties against any Class A registrant as follows:

(1) Not more than fifty dollars (\$50.00) for each day payment to the producer is late under § 2-6-107(a)(2);

(2) Not more than one hundred dollars (\$100) for each day payment to the producer is late under the contract between the registrant and the producer; and

(3) In instances where the registrant has paid a producer with an invalid or insufficient check, not more than two hundred dollars (\$200) for each day the check is invalid or insufficiently funded.

History. Acts 1987, No. 365, §§ 7, 9, 10; 1989 (3rd Ex. Sess.), No. 53, § 4.

2-6-107. Purchase methods — Delays.

(a) Each processor shall use one (1) of the following methods to purchase catfish products:

(1) The processor may deliver to the producer or his or her authorized representative and any secured parties the full amount of the purchase price on the same day the catfish product is purchased and possession is transferred;

(2)(A) Before the close of the fourteenth calendar day following the purchase of the catfish products and transfer or possession of the catfish products, the processor may deliver to the producer or his or

her authorized representative and any secured parties the full amount of the purchase price.

(B) If the producer or his or her authorized representative or secured parties are not present to receive payment at the point of transfer or possession, as provided in subdivision (a)(1) of this section, the processor shall wire transfer funds or place a check in the United States mail for the full amount of the purchase price, properly addressed to the producer and any secured parties, within the time limits specified in this subsection. This action shall be deemed in compliance with the requirement for prompt payment under this subdivision (a)(2); or

(3) The parties to the purchase and sale of catfish products may expressly agree in writing before the purchase or sale to effect payment in a manner other than that required in subdivision (a)(1) or (2) of this section if the manner of payment does not interfere with the rights of secured parties. Any agreement shall be disclosed in the records of any producer selling the catfish and in the processors' records and on the accounts or other documents issued by the processors relating to the transaction.

(b)(1) Regardless of the method elected under subdivision (a)(2) of this section to purchase catfish products, a Class A registrant, prior to the transaction, shall be required to:

(A) Be bonded in the amount of two hundred fifty thousand dollars (\$250,000) or in an amount which may be determined by the State Plant Board;

(B) Post a security bond in the amount of two hundred fifty thousand dollars (\$250,000) or in an amount which may be determined by the board; or

(C) Provide cash security, letters of credit, and such other evidences of security as shall be authorized by the board.

(2) However, if a Class A registrant purchases catfish solely and exclusively from producers that are also the owners of the processor, then the Class A registrant is exempt from the bonding or security requirements imposed under subdivision (b)(1) of this section.

(c) Any delay or attempt to delay, by a processor purchasing catfish products, the collection of funds as provided in this chapter or otherwise for the purpose of or resulting in extending the normal period of payment for the catfish shall be considered an unfair practice in violation of this chapter.

(d)(1) At the time catfish are delivered to a processor and unloaded from a live-haul truck, the processor shall weigh the catfish using a device that is of a type suitable for the weighing of catfish.

(2) Deductions for trash fish, turtles, and other foreign material except water shall be determined by a separate weighing of the same.

(3) There shall be no water tare nor deductions made for water in weighing baskets.

(4) Processors are responsible for draining water from weighing baskets.

(e)(1) Scales used to weigh catfish and foreign material under this section must be capable of electronically printing a ticket that provides an exact duplicate of the weight indicated.

(2) A copy of the ticket shall be provided to the producer at the time of weighing.

(3) The ticket shall also contain the following:

(A) The name and address of the processor;

(B) The name of the owner of the catfish being weighed;

(C) The date the catfish are weighed;

(D) The signature of the individual who weighs the catfish; and

(E) Any additional information as the board deems necessary for the lawful and accurate recording of the weight of the catfish.

(f) Processors who process less than seventeen thousand five hundred pounds (17,500 lbs.) of catfish per week are not required to use the electronic printing scales otherwise required by this section.

(g) The board shall be responsible for the enforcement of this section, and its agents shall perform periodic inspections of processing plants to ensure that the provisions of this section are being carried out and that all deductions for foreign material are legitimate and fair to the producer.

History. Acts 1987, No. 365, § 5; 1989 (3rd Ex. Sess.), No. 53, § 5; 1991, No. 764, § 1; 2003, No. 128, § 2.

2-6-108. [Repealed.]

Publisher's Notes. This section, concerning this chapter's applicability to unbonded processors, was repealed by iden-

tical Acts 1995, Nos. 190 and 191, § 2. The section was derived from Acts 1989 (3rd Ex. Sess.), No. 53, § 6.

2-6-109. Receivership — Petition — Assets.

(a) The Director of the State Plant Board in his or her discretion may, following a suspension of a Class A registrant as provided in this chapter, file a verified petition in the proper court requesting that the director be appointed as a receiver to take custody of catfish in the registrant's facility and to provide for the disposition of those assets in the manner provided in this chapter and under the supervision of the court.

(b) The petition shall be filed in the county in which the registrant is located. The proper court shall appoint the director as receiver.

(c) Upon the filing of the petition, the court shall issue ex parte such temporary orders as may be necessary to preserve or protect the assets in receivership, or the value thereof, and the rights of producers, until a plan of disposition is approved.

History. Acts 1989 (3rd Ex. Sess.), No. 53, § 7.

2-6-110. Receivership — Plan for disposition of catfish.

A petition filed by the Director of the State Plant Board under § 2-6-109 shall be accompanied by the director's plan for disposition of the processed catfish. The plan may provide for the pro rata delivery of part or all of the processed catfish to producers holding weigh tickets, or may provide for the sale under the supervision of the director of part or all of the processed catfish for the benefit of those producers, or may provide for any combination thereof, as the director in his or her discretion determines to be necessary to minimize losses.

History. Acts 1989 (3rd Ex. Sess.), No. 53, § 7.

2-6-111. Receivership — Hearings on plan — Notice — Service.

(a) When a petition is filed by the Director of the State Plant Board under § 2-6-109 the clerk of court shall set a date for hearing on the director's proposed plan of disposition at a time not less than ten (10) nor more than fifteen (15) calendar days after the date the petition is filed.

(b) Copies of the petition, the notice of hearing, and the director's plan of disposition shall be served upon the Class A registrant and upon the surety company issuing the Class A registrant's bond in the manner required for service of an original notice.

(c) A delay in effecting service upon the Class A registrant or surety shall not be cause for denying the appointment of a receiver and shall not be grounds for invalidating any action or proceeding in connection therewith.

History. Acts 1989 (3rd Ex. Sess.), No. 53, § 7.

2-6-112. Receivership — Notification to weigh ticket holders.

(a) The Director of the State Plant Board shall cause a copy of each of the documents served upon the Class A registrant under § 2-6-111 to be mailed by ordinary mail to every person holding a weigh ticket issued by the Class A registrant, as determined by the records of the Class A registrant or the records of the director.

(b) The failure of any person referred to in this section to receive the required notification shall not invalidate the proceedings on the petition for the appointment of a receiver or any portion thereof.

(c) Persons referred to in this section are not parties to the action unless admitted by the court upon application therefor.

History. Acts 1989 (3rd Ex. Sess.), No. 53, § 7.

2-6-113. Receivership — Publication of notification of receiver's appointment.

When appointed as a receiver under this chapter the Director of the State Plant Board shall cause notification of the appointment to be published once each week for two (2) consecutive weeks in a newspaper of general circulation in each of the counties in which the Class A registrant maintains a business location, and in a newspaper of general circulation in this state.

History. Acts 1989 (3rd Ex. Sess.), No. 53, § 7.

2-6-114. Receivership — Designee — Duties of director.

The Director of the State Plant Board may designate one (1) of his or her employees to appear on behalf of the director in any proceedings before the court with respect to the receivership, and to exercise the functions of the director as receiver, except that the director shall determine whether or not to petition for the appointment as receiver, shall approve the proposed plan for disposition of processed catfish, shall approve the proposed plan for distribution of any cash proceeds, and shall approve the proposed final report.

History. Acts 1989 (3rd Ex. Sess.), No. 53, § 7.

2-6-115. Receivership — Applicability of administrative procedures.

The actions of the Director of the State Plant Board in connection with petitioning for appointment as a receiver, and all actions pursuant to such appointment, shall not be subject to the provisions of the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

History. Acts 1989 (3rd Ex. Sess.), No. 53, § 7.

2-6-116. Receivership — Sureties.

When the Director of the State Plant Board is appointed as receiver under this chapter, the surety on the bond of the Class A registrant shall be joined as a party defendant by the director. If required by the court, the surety shall pay the bond proceeds, or so much thereof as the court finds necessary, into the court, and when so paid the surety shall be absolutely discharged from any further liability under the bond to the extent of the payment.

History. Acts 1989 (3rd Ex. Sess.), No. 53, § 7.

2-6-117. Receivership — Notice of claims filing deadline.

(a) When appointed as receiver under this chapter, the Director of the State Plant Board is authorized to give notice in the manner specified by the court to persons holding weigh tickets issued by the Class A registrant to file their claims within sixty (60) calendar days after the date of appointment.

(b) Failure to timely file a claim shall defeat the claim with respect to the surety bond and any catfish, or proceeds from the sale of catfish, except to the extent of any excess remaining after all timely claims are paid in full.

History. Acts 1989 (3rd Ex. Sess.), No. 53, § 7.

2-6-118. Receivership — Sale of processed catfish — Merchandiser.

(a) When the court approves the sale of processed catfish the Director of the State Plant Board shall employ a merchandiser to effect the sale of those commodities.

(b) A person employed as a merchandiser must meet the following requirements:

(1) The person shall be experienced or knowledgeable in the operation of processors registered under this chapter, and if the person has ever held a registration certificate issued under this chapter, the person shall never have had the registration suspended;

(2) The person shall be experienced or knowledgeable in the marketing of aquacultural products;

(3) The person shall not be the holder of a weigh ticket issued by the Class A registrant and shall not have a claim against the Class A registrant, whether as a secured or unsecured creditor, and otherwise shall not have any pecuniary interest in the Class A registrant or the Class A registrant's business.

(c) The merchandiser shall be entitled to reasonable compensation as determined by the director.

(d) A sale of processed catfish shall be made in a commercially reasonable manner and under the supervision of the director.

(e) The director shall have authority to sell the processed catfish, and provisions of the Uniform Commercial Code, § 4-1-101 et seq., to the contrary notwithstanding, any processed catfish so sold shall be free of all liens and other encumbrances.

History. Acts 1989 (3rd Ex. Sess.), No. 53, § 7.

2-6-119. Receivership — Distribution to producers.

The plan of disposition, as approved by the court, shall provide for the distribution of the processed catfish, or the proceeds from the sale of

processed catfish or the proceeds from any surety bond, or any combination thereof, less expenses incurred by the Director of the State Plant Board in connection with the receivership, to producers on a pro rata basis as their interests are determined. Distribution shall be without regard to any setoff, counterclaim, or charge.

History. Acts 1989 (3rd Ex. Sess.), No. 53, § 7.

2-6-120. Receivership — Continued operation of business.

The Director of the State Plant Board may, with the approval of the court, continue the operation of all or any part of the business of the Class A registrant on a temporary basis and take any other course of action or procedure which will serve the interests of the producers.

History. Acts 1989 (3rd Ex. Sess.), No. 53, § 7.

2-6-121. Receivership — Reimbursement.

The Director of the State Plant Board shall be entitled to reimbursement out of processed catfish or proceeds held in receivership for all expenses incurred as court costs or in handling and disposing of processed catfish, and for all other costs directly attributable to the receivership. The right of reimbursement of the director shall be prior to any claims against the processed catfish or proceeds of sale thereof and shall constitute a claim against the surety bond of the Class A registrant.

History. Acts 1989 (3rd Ex. Sess.), No. 53, § 7.

2-6-122. Receivership — Proceeds — Termination.

In the event the approved plan of disposition requires the sale of processed catfish, or the distribution of proceeds from the surety bond, or both, the Director of the State Plant Board shall submit to the court a proposed plan of distribution of those proceeds. Upon such notice and hearing as may be required by the court, the court shall accept or modify the proposed plan. When the plan is approved by the court and executed by the director, the director shall be discharged and the receivership terminated.

History. Acts 1989 (3rd Ex. Sess.), No. 53, § 7.

2-6-123. Receivership — Final report.

At the termination of the receivership, the Director of the State Plant Board shall file a final report containing the details of his or her actions, together with such additional information as the court may require.

History. Acts 1989 (3rd Ex. Sess.), No. 53, § 7.

CHAPTER 7
FARM MEDIATION

SUBCHAPTER

1. GENERAL PROVISIONS.
2. FARM MEDIATION OFFICE.
3. MEDIATION.

RESEARCH REFERENCES

Ark. L. Notes. Kilpatrick, How Much Dispute Resolution?, 1996 Ark. L. Notes Do You Know (or Care) About Alternative 53.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

2-7-101. Title.
2-7-102. Definitions.

SECTION.

2-7-103. [Repealed.]

RESEARCH REFERENCES

Am. Jur. 4 Am. Jur. 2d, Alt. Disp. Res., cultural Law, 12 U. Ark. Little Rock L.J. § 1 et seq. 597.
U. Ark. Little Rock L.J. Survey, Agri-

2-7-101. Title.

This chapter shall be known and may be cited as the “Arkansas Farm Mediation Act”.

History. Acts 1989, No. 829, § 1.

CASE NOTES

Cited: First Nat’l Bank v. Clinton, 304 Ark. 411, 802 S.W.2d 928 (1991).

2-7-102. Definitions.

As used in this chapter, unless the context otherwise requires:
(1)(A) “Action” means a court action or legal recourse to the courts of the State of Arkansas by a creditor against a farmer for payment of a

debt, to enforce or foreclose a security interest, lien, or mortgage, or to repossess or declare a creditor's interest in agricultural property.

(B) "Action" includes, but is not limited to, garnishment, replevin, foreclosure, execution of judgment, and involuntary receivership;

(2) "Agricultural property" means all of the following:

(A) Real property that is used principally for farming or ranching;

(B) Real property that is a farmer's principal place of residence and any land contiguous to the residence;

(C) Personal property that is used as security to finance farming or ranching; and

(D) Personal property that is used for farming or ranching;

(3) "Creditor" means any person who holds a mortgage on agricultural property, who has a lien on or a security interest in agricultural property, or who is a judgment creditor with a judgment against a farmer affecting the farmer's agricultural property;

(4) "Farmer" means any person who is engaged in farming or ranching, who has at least twenty thousand dollars (\$20,000) in outstanding agricultural loans that are secured by real estate, crops, livestock, farm machinery, or other agricultural supplies, and who either:

(A) Owns or leases a total of fifty (50) acres or more of land that is agricultural property; or

(B) Has had gross sales of farm products of at least twenty thousand dollars (\$20,000) in any of the preceding three (3) years;

(5) "Farming" or "ranching" means the employment or operation of real property for the production of agricultural products including, but not limited to, the following:

(A) The production or cultivation of agricultural, horticultural, or aquacultural commodities such as field crops, rice, soybeans, cotton, sorghum, corn, wheat, fruit, vegetables, mushrooms, nursery stock, ornamental trees, sod, or flowers;

(B) Animal or poultry husbandry and the production of poultry and poultry products, livestock, equine or fur-bearing animals and wildlife, including the raising, breeding, shearing, grazing, or other feeding of these animals;

(C) Dairy production;

(D) Viticulture, wine-making, and related activities; and

(E) On-site storing, handling, and processing incidental to the production of the foregoing agricultural or horticultural products and commodities;

(6) "Mediation" means the process in which a neutral person or persons intermediate between or among parties for the purpose of facilitating the settlement of their dispute by mutual agreement; and

(7) "Party" or "parties" means, with respect to the mediation of a dispute affecting a farmer's agricultural property, the farmer, a creditor of the farmer, and any other person necessary to the resolution of a dispute or an action.

History. Acts 1989, No. 829, § 2.

2-7-103. [Repealed.]

Publisher's Notes. This section, which excluded from this chapter commercial banks chartered by the state or federal

government, was repealed by Acts 1989 (1st Ex. Sess.), No. 36, § 16. The section was derived from Acts 1989, No. 829, § 11.

SUBCHAPTER 2 — FARM MEDIATION OFFICE

SECTION.

2-7-201. Creation.

2-7-202. Disclosure of information.

SECTION.

2-7-203. Forms.

2-7-201. Creation.

(a) There is hereby created within the Division of Agriculture Development of the Arkansas Development Finance Authority the Arkansas Farm Mediation Office which shall administer the Arkansas Farm Mediation Program to provide mediation and debt management services to farmers and their creditors in the State of Arkansas.

(b)(1) The program shall be administered by the Director of the Division of Agriculture Development who shall employ mediators and administrative staff in such numbers as are necessary and as the General Assembly may appropriate to carry out the provisions of this chapter.

(2) The director may apply to the United States Secretary of Agriculture or any other agency or department for any financial assistance for the administration and operation of the program.

(3) The director or his or her designee shall select mediators who are knowledgeable in the areas of finance, agriculture, and negotiation and shall train them in any other matters as are necessary to carry out their functions under this chapter.

(4) The director shall have the authority to promulgate any necessary rules and regulations to carry out the provisions of this chapter.

History. Acts 1989, No. 829, § 3.

A.C.R.C. Notes. The Division of Agriculture Development was transferred from the Arkansas Industrial Develop-

ment Commission to the Arkansas Development Finance Authority by Acts 1989, No. 885.

2-7-202. Disclosure of information.

(a) All materials, data, and information received by the Arkansas Farm Mediation Office are confidential and are not subject to examination or disclosure as public information under the Freedom of Information Act, § 25-19-101 et seq.

(b) No mediator or administrative employee of the office shall knowingly disclose any materials, data, or information concerning a mediation request or suspension order without the consent of the farmer and the creditors involved.

(c) Mediation meetings between a farmer and any other parties conducted by a mediator are not open to public participation and are not subject to the provisions for open meetings under the Freedom of Information Act of 1967, § 25-19-101 et seq.

History. Acts 1989, No. 829, § 10.

2-7-203. Forms.

The Arkansas Farm Mediation Office shall prepare all forms necessary for the administration of this chapter and shall ensure that forms are disseminated and that the availability of mediation under this chapter is publicized so that creditors and borrowers of agricultural loans receive adequate notification of the Arkansas Farm Mediation Program.

History. Acts 1989, No. 829, § 3.

SUBCHAPTER 3 — MEDIATION

SECTION.

- 2-7-301. Voluntary mediation.
- 2-7-302. Release prior to proceedings required — Exceptions.
- 2-7-303. Notice — Form and content.
- 2-7-304. Requests for mediation.
- 2-7-305. Information on services — Assignment of mediator.
- 2-7-306. When provisions not applicable.

SECTION.

- 2-7-307. Initial meeting — Subsequent meetings.
- 2-7-308. Right to attorney — Duties of mediator.
- 2-7-309. Agreements.
- 2-7-310. Release of creditor — Effective period.

2-7-301. Voluntary mediation.

(a)(1) A farmer and any creditor of the farmer may voluntarily participate in mediation under the Arkansas Farm Mediation Program if they wish to resolve a dispute between them that involves the creditor's interest in a mortgage, lien, security interest, or judgment affecting the agricultural property of the farmer.

(2) Voluntary mediation shall occur before an action has been initiated in court in which the farmer and creditor are parties.

(b) The Arkansas Farm Mediation Office shall adopt voluntary mediation application and request forms.

History. Acts 1989, No. 829, § 5.

2-7-302. Release prior to proceedings required — Exceptions.

(a) In connection with a secured indebtedness of twenty thousand dollars (\$20,000) or more, no proceeding against a farmer shall be commenced to foreclose a mortgage on agricultural property, to terminate a contract for deed to purchase agricultural property, to repossess or foreclose a security interest in agricultural property, to set off or seize an account, moneys, or other asset which is agricultural property, or to

enforce any judgment against agricultural property unless the creditor has first obtained a release as provided in this chapter.

(b) An action for attachment or replevin may be commenced without first obtaining a release in those cases provided for under § 16-110-101(1)(A)(vi)-(viii) or § 18-60-807.

History. Acts 1989, No. 829, § 4.

CASE NOTES

Cited: First Nat'l Bank v. Clinton, 304 Ark. 411, 802 S.W.2d 928 (1991).

2-7-303. Notice — Form and content.

(a) Prior to commencing any proceeding prohibited by this section, § 2-7-302, and §§ 2-7-304 — 2-7-306 without first obtaining a release, a creditor shall serve a notice on the farmer that the farmer may request mandatory mediation of the farm indebtedness.

(1) The notice shall be in a form and contain the information as required by rule.

(2) The Director of the Arkansas Farm Mediation Program shall make forms available in each county recorder's office.

(b) The notice shall contain, at a minimum, the following information:

(1) The name and address of the farmer;

(2) The name, address, and telephone number of the creditor;

(3) A description of the debt and the amount currently owed;

(4) A description of the agricultural property securing the debt;

(5) A description of the proceeding the creditor intends to commence or continue or the action the creditor intends to take;

(6) A statement that the farmer has the right to request mandatory mediation which could result in restructuring the debt;

(7) The address and telephone number of the director;

(8) A statement that a request for mandatory mediation must be served on the director within fourteen (14) days after service of the notice on the farmer; and

(9) The location of the office of the recorder of the county in which the farmer resides where an application form for requesting mandatory mediation may be obtained.

(c) A creditor shall also serve a copy of such mediation notice on the director within five (5) days after the mediation notice has been served on the farmer by the creditor.

History. Acts 1989, No. 829, § 4.

2-7-304. Requests for mediation.

All requests for mediation by a farmer under § 2-7-302 shall be served on the Director of the Arkansas Farm Mediation Program within fourteen (14) days after the mediation notice was served on the farmer by the creditor. Every request for mediation shall be in a form and contain the information required by the director.

History. Acts 1989, No. 829, § 4.

2-7-305. Information on services — Assignment of mediator.

(a) Within five (5) days after receiving a request for mediation, the Director of the Arkansas Farm Mediation Program shall inform the farmer and the creditor of any financial analysis or legal or other services available that may assist them in preparing for the mediation meeting and of any other requirements the farmer and creditor must meet prior to the mediation meeting.

(b)(1) Within twenty-one (21) days after receiving a request for mediation, the director shall assign a mediator and serve notice on the farmer and all his or her known creditors of the name of the mediator, the time and place of the mediation meeting.

(2) The meeting shall be not more than forty-two (42) days after the director receives the request, and of any activities prohibited during mediation.

History. Acts 1989, No. 829, § 4.

2-7-306. When provisions not applicable.

Sections 2-7-302 — 2-7-305 shall not apply:

(1) Where the debt to be collected was listed as a scheduled debt by the farmer in a petition in bankruptcy or for which a proof of claim form has been filed by a creditor under United States Code, Title 11, Chapters 7, 11, 12, or 13; and

(A) The debt was discharged;

(B) The creditor was granted relief from the automatic stay;

(C) Provision for repayment, restructuring, or other treatment of the debt was made in a confirmed plan;

(D) In the year preceding the date of commencement of the collection action, the automatic stay provided for under 11 U.S.C. § 362 was in effect with regard to the debt for more than ninety (90) days; or

(2) When the Arkansas Farm Mediation Office has not adopted and promulgated bylaws, rules, regulations, or program guidelines necessary to implement this chapter or has not hired qualified mediators for the mediation region in which the agricultural property involved is located.

History. Acts 1989, No. 829, § 4.

2-7-307. Initial meeting — Subsequent meetings.

(a) The initial mediation meeting shall be attended by the farmer and the creditor who served the mediation notice. The meeting shall be at least one (1) hour long and may be continued for a longer period at the discretion of the parties involved. Other creditors of the farmer are strongly encouraged to attend and may attend all mediation meetings.

(b) After the initial meeting any further mediation meetings shall be held by consent of the parties.

History. Acts 1989, No. 829, § 6.

2-7-308. Right to attorney — Duties of mediator.

(a)(1) A farmer or other party has the right to be represented by an attorney at any mediation meeting or hearing.

(2) A waiver of this right prior to any mediation meeting or hearing is ineffective.

(b) At the initial mediation meeting and subsequent meetings, the mediator shall:

(1) Listen to the farmer and the creditors desiring to be heard;

(2) Attempt to mediate between the farmer and the creditors to reach a consensus where possible;

(3) Advise the farmer and creditor as to the existence of available assistance programs;

(4) Encourage the parties to adjust, refinance, or provide for the payment of the farmer's debts; and

(5) Advise, counsel, and assist the farmer and creditors in attempting to arrive at an agreement for the future conduct of financial relations among the parties or to arrive at a settlement which may be stipulated to in court for the resolution to the court action.

History. Acts 1989, No. 829, §§ 7, 9.

2-7-309. Agreements.

If an agreement is reached between the farmer and any creditor or creditors, the agreement shall:

(1) Be signed by the farmer and any such creditor or creditors;

(2) Bind each to the terms of the agreement;

(3) Be enforced as a legal contract between the farmer and such creditor or creditors; and

(4) Constitute a mediation release.

History. Acts 1989, No. 829, § 8.

2-7-310. Release of creditor — Effective period.

(a) The Director of the Arkansas Farm Mediation Program shall issue a release upon request to any creditor who has paid any required fees and:

(1) Who has attended an initial mediation meeting pursuant to § 2-7-301 or § 2-7-307;

(2) Who has served a mediation notice on the farmer and the farmer has not requested mediation within the time allowed;

(3) When the farmer has waived mediation with respect to that creditor or the agricultural property at issue;

(4) When the agricultural property has been abandoned by the farmer;

(5) In the discretion of the director if the default is other than monetary;

(6) When ordered to do so by a court upon a finding by the court that mediation would be unduly burdensome and an extreme hardship on the creditor;

(7) Upon the failure of a farmer to appear at a scheduled mediation meeting; or

(8) As otherwise provided by rule.

(b) A release is effective as to any proceeding commenced or continued or any action taken one (1) year or less after its date of issuance, but a release is not effective as to any proceeding commenced or action taken more than one (1) year after its date of issuance.

History. Acts 1989, No. 829, § 8.

CHAPTER 8

TAX CREDITS FOR BIOTECHNOLOGY AND ADVANCED BIOFUELS

SECTION.

2-8-101. Legislative findings.

2-8-102. Definitions.

2-8-103. Tax credit for biotechnology facilities.

2-8-104. Tax credit for biotechnology business activities.

2-8-105. Tax credit for biotechnology research.

SECTION.

2-8-106. Amount of credit — Eligibility.

2-8-107. Apportionment of credit.

2-8-108. Certification — Regulations — Inspection.

2-8-109. Tax credit for advanced biofuels facility.

Effective Dates. Acts 1997, No. 1117, § 12: Jan. 1, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly of this State that unemployment, underemployment, and economic under-development have reached intolerable levels, and that the State as a whole has been unable to compete in the area of biotechnology and that the incentives under this Act are critical to the economic development of Arkansas. Therefore, an emergency is declared to exist and this act being immediately nec-

essary for the preservation of the public peace, health and safety shall become effective for taxable year beginning on and after January 1, 1997."

Acts 1999, No. 1367, § 9: Apr. 12, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly that Arkansas exports approximately one billion dollars (\$1,000,000,000) to two billion dollars (\$2,000,000,000) each year for motor fuels; that Arkansas ranks number one (1) among the states in per vehicle consump-

tion of motor fuels; that Arkansas possesses vast quantities of feedstocks appropriate for advanced biofuels; that these feedstocks present both an economic and an environmental detriment to the state if not used or disposed of in an acceptable manner; that intellectual property exists in the state to address the production of advanced biofuels; that advanced biofuels generally offer cleaner burning characteristics than conventional motor fuels; and that it is necessary to provide mobility to the citizens of the state and to address the need for the increased production of motor

fuels within the state. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

2-8-101. Legislative findings.

(a) Agriculture and economic development are dependent on biotechnology, which affects every Arkansas farmer from the smallest tomato grower to the largest poultry producer. Furthermore, intellectual property developed at Arkansas' state-supported colleges and universities is being exported to other states for exploitation. Development of biotechnology in Arkansas is required for the state's medical, agricultural, and other industries to remain competitive in the twenty-first century.

(b) Biotechnology develops uses of biochemistry, molecular biology, genetics, and bioengineering to meet the needs of agriculture, aquaculture, forestry, energy, and environmental industries, as well as develops products useful for modern medicine and pharmaceuticals. Biotechnology provides high-paying jobs and develops high value-added products which require an educated workforce with advanced technical skills. Moreover, the growth of the biotechnology industry in agriculture and other areas will enable Arkansas to maintain a competitive advantage in the marketplace.

(c) The General Assembly finds that the biotechnology industry is at a competitive disadvantage compared to other industries in Arkansas. The biotechnology industry takes a longer period than other companies between research, product development, and marketing. Therefore, it is determined and declared that research, development, and education in biotechnology are within the public interest.

(d) It is further determined and declared that it is in the best interest of the state to encourage the manufacturing of products derived from biotechnology.

History. Acts 1997, No. 1117, § 1; 1999, No. 1367, § 1.

2-8-102. Definitions.

As used in this chapter:

(1) "Advanced biofuels" means ethanol, methanol, or any derivatives thereof, which are produced through biological means other than direct fermentation of a food crop;

(2) "Advanced biofuels facilities" means the buildings and equipment necessary to produce advanced biofuels;

(3)(A) "Base year qualified research costs" means the costs of qualified research for the 1996 tax year.

(B) For any new taxpayer or taxpayer not required to file an Arkansas tax return in 1996, the base year qualified research costs shall be zero dollars (\$0);

(4) "Biomass" means any organic material, including solid waste but excluding oil, natural gas, coal and lignite, or any other product thereof;

(5) "Biotechnology" means the uses of biochemistry, molecular biology, genetics, and bioengineering to meet the needs of agriculture, aquaculture, forestry, energy, and environmental industries, as well as developing products useful for modern medicine, veterinary science, and pharmaceuticals;

(6) "Biotechnology facilities" means facilities and equipment required to carry out qualified research;

(7) "Cost" means expenditures on or after the tax year beginning January 1, 1997, and incurred after certification by the Director of the Arkansas Economic Development Commission that the company qualifies for incentives under this chapter:

(A) In the case of biotechnology facilities and advanced biofuels facilities, all activities and costs associated with site, construction, expansion, improvement, renovation, or purchase of such facilities, including costs incurred in the purchase and installation of equipment, and support infrastructure;

(B) For the purpose of higher education partnerships, costs and expenses of conducting qualified research through a cooperative research project with one (1) or more state-supported institutions of higher education in Arkansas for the conduct of qualified research;

(C)(i) For the purpose of training, costs shall be limited to:

(a) A six-month period of training at the facility; or

(b) The cost of tuition, books, and fees for a program of secondary, undergraduate, or postgraduate education in an accredited institution of higher learning.

(ii) The costs associated with subdivisions (7)(C)(i)(a) and (b) of this section eligible for the income tax credit shall not include salaries and wages of the employees being trained.

(iii) Total costs for training shall not exceed ten thousand dollars (\$10,000) per employee;

(D) In the case of transfer of title or finance lease, the amount of the purchase price; or

(E) In the case of a lease which is not a finance lease but which otherwise qualifies as a purchase under this section, the amount of

the lease payments due to be paid during the term of the lease after deducting any portion of the lease payments attributable to interest, insurance, and taxes;

(8) "Credit year" means the tax year in which costs are incurred;

(9) "Finance lease" means a lease agreement which is treated as a purchase by a lessee for Arkansas income tax purposes;

(10) "Higher education partnership" means any cooperative research project defined by terms of a written agreement in which companies engaged in the business of biotechnology contract with state-supported institutions of higher learning in Arkansas for the conduct of qualified research;

(11) "Intellectual property" means patents, trade secrets, copyrights, and trademarks used in biotechnology;

(12) "Purchase" means a transaction under which title to an item is transferred for consideration or a lease contract for a period of at least three (3) years regardless of whether title to the item is transferred at the end of the period;

(13)(A)(i) "Qualified research" means scientific research and development in the field of biotechnology, including experimental or laboratory activity to develop new products, improve existing products, or develop new uses of products, but only to the extent that activity is conducted in Arkansas or is required by federal authorities to be conducted elsewhere.

(ii) Qualified research shall be performed primarily under laboratory, clinical, or field experimental conditions for the purpose of reducing a concept or idea to practice, or to advance a concept or idea or improvement thereon to the point of practical application.

(B) Qualified research does not include tests or inspection of materials or products for quality control, efficiency surveys, management studies, other market research, or any other ordinary and necessary expenses of conducting business;

(14) "Solid waste" means any garbage or sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, agricultural, residential, and other community activities, but does not include solid or dissolved materials in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges that are point sources subject to permit under 33 U.S.C. § 1342, or source, special nuclear, or by-product materials as defined by the Atomic Energy Act of 1954, 42 U.S.C. § 2011 et seq.; and

(15) "Training" means employer-paid training within Arkansas that is necessary to prepare employees for work in biotechnology.

History. Acts 1997, No. 1117, § 2; 1999, No. 1367, § 2; 2001, No. 900, § 1.

2-8-103. Tax credit for biotechnology facilities.

(a) There shall be allowed a credit against the income tax imposed by § 26-51-101 et seq. in an amount as determined in subsection (b) of this section for any Arkansas taxpayer for the cost of biotechnology facilities.

(b) The amount of the credit allowed shall be equal to five percent (5%) of the cost of such facility.

(c) The costs of service contracts, sales tax, and acquisition of undeveloped land shall not be included in determining the amount of the credit.

(d)(1) No income tax credit shall be claimed by any taxpayer for any facility or equipment which is in use on or before the certification of the company for tax credits or for which a tax credit was previously claimed by any other taxpayer for any other tax year.

(2) However, the provisions of this subsection shall not apply if any entity is sold and the entity is entitled to an income tax credit under this chapter.

History. Acts 1997, No. 1117, § 3; 2001, No. 900, § 2.

2-8-104. Tax credit for biotechnology business activities.

(a) There shall be allowed a credit against the income tax imposed by § 26-51-101 et seq. in an amount as determined in subsection (b) of this section for any Arkansas taxpayer engaged in the business of biotechnology for the cost of:

(1) Training of employees; or

(2) Higher education partnerships.

(b) The amount of the credit allowed shall be equal to thirty percent (30%) of the cost of employee training or of the higher education partnerships.

History. Acts 1997, No. 1117, § 4.

2-8-105. Tax credit for biotechnology research.

(a) There shall be allowed a credit against the income tax imposed by § 26-51-101 et seq. in an amount as determined in subsection (b) of this section for any Arkansas taxpayer engaged in the business of biotechnology for the cost of qualified research in biotechnology, including, but not limited to, the cost of purchasing, licensing, developing, or protecting intellectual property.

(b) The amount of the credit allowed shall be twenty percent (20%) of the amount that the cost of qualified research exceeds the cost of such research in the base year.

History. Acts 1997, No. 1117, § 5.

2-8-106. Amount of credit — Eligibility.

(a) The income tax credits provided in this chapter shall be used to offset the first fifty thousand dollars (\$50,000) of income tax liability arising during the credit year and fifty percent (50%) of any remaining income tax liability for the year. Any unused credit may be carried forward for a maximum of fourteen (14) taxable years after the credit year in which the credit originated.

(b) The taxpayer shall refund the amount of the income tax credit determined by subsection (c) of this section if within fourteen (14) years of the taxable year for which the credit is originated the Arkansas Economic Development Commission and the Department of Finance and Administration find that the taxpayer has ceased to qualify for tax credits under the provisions of this chapter.

(c)(1) In the event it is determined that any taxpayer receiving the benefits under this chapter has failed to comply with the conditions contained in this chapter, that taxpayer shall be liable for the payment of such additional income taxes as may be due after the income tax credits provided for in this chapter are disallowed, plus penalty and interest.

(2) In accordance with § 26-18-208(2)(B), there shall be added to the original tax due a penalty of one percent (1%) of the additional tax due for not more than one (1) month, with an additional one percent (1%) for each additional month or fraction thereof, from the original due date of the tax year in question until date of payment not to exceed thirty-five percent (35%) in the aggregate.

(3) In accordance with § 26-18-508, interest shall be assessed at ten percent (10%) per annum from the date the original tax would have been due until date of payment.

(d) A taxpayer who receives a credit under this chapter for the purchase of machinery or equipment shall not be entitled to claim any other state or local tax credit or deduction based on the purchase of the machinery or equipment, except the deduction for normal depreciation.

History. Acts 1997, No. 1117, § 6; 1999, No. 1367, § 4; 2001, No. 900, § 3.

2-8-107. Apportionment of credit.

(a) Under this chapter in the case of a proprietorship, partnership, or S corporation, the amount of credit determined shall be apportioned to each proprietor, partner, or S corporation shareholder in proportion to the amount of income from the entity which the proprietor, partner, or S corporation shareholder is required to include as gross income.

(b) In the case of an estate or trust:

(1) The amount of the credit determined for any taxable year shall be apportioned between the estate or trust and the beneficiaries on the basis of the income of the estate or trust allocable to each; and

(2) Any beneficiary to whom any amount has been apportioned under this subsection shall be allowed, subject to limitations contained in this chapter, to a credit under this chapter for that amount.

History. Acts 1997, No. 1117, § 7.

2-8-108. Certification — Regulations — Inspection.

(a) To claim the benefits of this chapter, a taxpayer must obtain certification from the Director of the Arkansas Economic Development Commission certifying to the Revenue Division of the Department of Finance and Administration that the taxpayer is engaged in qualified research in biotechnology or the manufacturing of advanced biofuels.

(b) The Arkansas Economic Development Commission, or its successor, shall promulgate regulations as necessary to administer this chapter. These rules or regulations may include, but are not limited to, the establishment of technical specifications and requirements for information and documentation for taxpayers seeking a credit under this chapter.

(c) In order to determine eligibility for the credit or to ensure that the facility or equipment is being utilized in the required manner, each agency shall have the right to inspect facilities and records of a taxpayer requesting or receiving a credit under this chapter.

History. Acts 1997, No. 1117, § 8; 1999, No. 1367, § 5.

2-8-109. Tax credit for advanced biofuels facility.

(a) There shall be allowed a credit against the income tax imposed by the Income Tax Act of 1929, § 26-51-101 et seq., in an amount as determined in subsection (b) of this section for any Arkansas taxpayer engaged in the business of producing advanced biofuels for the cost of:

- (1) Buildings;
- (2) Equipment;
- (3) Higher education partnerships; and
- (4) Purchasing, licensing, or protecting intellectual property necessary to manufacture advanced biofuels.

(b) The amount of the credit allowed shall be equal to thirty percent (30%) of the cost of buildings, equipment, higher education partnerships and licenses for intellectual property necessary to manufacture advanced biofuels.

History. Acts 1999, No. 1367, § 3.

CHAPTER 9

CATFISH INDUSTRY

SECTION.

- 2-9-101. Purpose.
- 2-9-102. Definitions.
- 2-9-103. Arkansas Catfish Promotion Board.
- 2-9-104. Powers.
- 2-9-105. Funding applications.
- 2-9-106. Voter referenda.
- 2-9-107. Election vote for the levy of the assessment.

SECTION.

- 2-9-108. Budget.
- 2-9-109. Assessment records.
- 2-9-110. Assessment refund.
- 2-9-111. Penalty.
- 2-9-112. Arkansas Catfish Promotion Fund.

2-9-101. Purpose.

The purpose of this chapter is to promote the growth and development of the catfish industry in Arkansas by research, extension, promotion, and market development, thereby promoting the general welfare of the people of Arkansas.

History. Acts 1999, No. 790, § 1.

2-9-102. Definitions.

As used in this chapter:

(1) "Catfish industry" means any person or entity involved in rearing, processing, or selling of pond-raised catfish for potential profit, including any person, group, or company involved in a support industry;

(2) "Commercial catfish producer" means any person or entity involved in rearing catfish for potential profit;

(3) "Feed seller", "seller", or "feed dealer" means any person or entity that sells feed to a commercial catfish producer; and

(4) "Processor" means any person, group, or entity that purchases catfish from a commercial producer for the purpose of redistribution.

History. Acts 1999, No. 790, § 2.

2-9-103. Arkansas Catfish Promotion Board.

(a) The Arkansas Catfish Promotion Board is created. The board shall be composed of seven (7) members appointed by the Governor as follows:

(1)(A) The Catfish Farmers of Arkansas, Inc., shall submit to the Governor the names of six (6) persons who are members of the catfish industry. The list of nominees shall include commercial catfish producers, processors, and feed dealers identified as such. The Arkansas Farm Bureau Federation shall submit to the Governor the names of six (6) persons who are commercial catfish producers. All members shall be residents of Arkansas.

(B) The Governor shall appoint four (4) members from the list submitted by the Catfish Farmers of Arkansas, Inc., and three (3) members from the list submitted by the Arkansas Farm Bureau Federation to serve on the board.

(2) Each year, not less than thirty (30) calendar days prior to the expiration of the terms of the current members of the board whose terms expire, the organizations named in subdivision (a)(1)(A) of this section shall submit to the Governor the names of two (2) nominees for each position to be filled on the board from the respective organizations, subject to the foregoing qualifications, and the Governor shall appoint the new members from each list of nominees. If no lists are submitted, the appointments shall be at the discretion of the Governor.

(3)(A) Each member selected shall serve for a term of two (2) years and until his or her successor is selected as provided in this section.

(B) However, the initial members of the board shall be appointed for terms that will result in three (3) members' terms expiring after one (1) year and four (4) members' terms expiring after two (2) years.

(4) A midterm vacancy on the board shall be filled by appointment by the Governor from a list submitted within thirty (30) calendar days from the organization making the nomination for the position being vacated.

(5) A member of the board may be removed by a majority vote of the remaining board members for conviction of a felony, for not attending three (3) consecutive meetings, or if the member no longer meets the qualifications for his or her initial appointment.

(b) The President of the Catfish Farmers of Arkansas, Inc., shall call an organizational meeting of the board and shall preside until officers are elected. Members of the board shall organize immediately after their appointment and shall elect a chair, a vice chair, and a secretary-treasurer from the membership of the board, whose duties shall be those customarily exercised by those officers or specifically designated by the board. The board may appoint an executive director, who shall be the chief operating officer of the board and whose duties shall be designated by the board.

(c) The board may provide a salary for the executive director and for other necessary employees from funds derived from the assessments imposed in this chapter. Members of the board shall serve without compensation but may be reimbursed for reasonable expenses.

(d) The principal office of the board shall be located in Little Rock, Pulaski County, Arkansas.

(e) The resident agents of the board shall be the executive director of the board and the chair of the board, or either of them.

History. Acts 1999, No. 790, § 4.

2-9-104. Powers.

The Arkansas Catfish Promotion Board may:

(1) Plan and conduct a program of research, market development, and advertising designed to promote the catfish industry in Arkansas;

(2) Use funds derived from the assessments imposed in this chapter for research, extension, market development, and advertising designed to promote the catfish industry in Arkansas, including salaries and administration expenses;

(3) Have perpetual succession as a body politic and corporate and adopt bylaws for the regulation of its affairs and the conduct of its business;

(4) Prescribe rules, regulations, and policies in connection with the performance of its functions and duties;

(5) Sue and be sued in its own name;

(6) Purchase, sell, or lease property of every description, real, personal, or mixed, including buildings or other facilities and equipment for the conduct of its business;

(7) Execute contracts and other instruments necessary or convenient in the exercise of its powers and functions; and

(8) Do any other acts and things necessary or convenient to carry out the purposes of this chapter and to exercise the powers granted by this chapter.

History. Acts 1999, No. 790, § 5.

2-9-105. Funding applications.

Disbursement of funds generated by this chapter shall be made only upon motion formally adopted by the Arkansas Catfish Promotion Board and presented to the Treasurer of State and only for the purpose prescribed in this chapter.

History. Acts 1999, No. 790, § 6; 2001, No. 215, § 1.

2-9-106. Voter referenda.

(a) The Arkansas Catfish Promotion Board shall maintain a list of commercial producers of catfish who are entitled to vote in referenda, shall prepare ballots for the referenda, and shall prescribe voting procedures. The board shall mail a ballot by registered mail to every commercial catfish producer identified on the list maintained by the board. Each producer shall be entitled to only one (1) vote.

(b) In all referenda, in order to be eligible to vote, a commercial catfish producer must have purchased catfish feed in the period from twelve (12) months immediately preceding the date of the referendum to not less than thirty (30) calendar days immediately preceding the date of the referendum.

(c) The Director of the Department of Finance and Administration shall be reimbursed from funds collected for the costs of holding referenda.

History. Acts 1999, No. 790, § 7.

2-9-107. Election vote for the levy of the assessment.

(a)(1) Within a reasonable time after July 30, 1999, the Arkansas Catfish Promotion Board shall cause an election to be held on the question of the levy of an assessment on the sale of catfish feed within the State of Arkansas to commercial catfish producers at a rate determined by the board, such rate of assessment not to exceed five dollars (\$5.00) per ton of catfish feed sold.

(2) If a majority of the commercial catfish producers voting at the election vote for the levy of the assessment, the assessment shall be applicable to all sales of catfish feed made on and after a date specified by the board, which date shall not be later than ninety (90) calendar days after certification of the results of the election.

(3) The assessment shall be a continuing levy until either terminated by the board or until another election is held at which a majority of the commercial catfish producers voting at an election vote against the levy. The rate of assessment approved at an election shall not be increased except pursuant to the majority vote of the commercial catfish producers voting at a subsequent election.

(b)(1) When petitions containing the signatures of thirty percent (30%) of the commercial catfish producers in the state, as determined by the latest available agricultural census data, are filed with the board requesting that the question of continuing the assessment be submitted to a vote of the catfish producers, the board shall cause an election to be held within ninety (90) calendar days after the filing of the petitions, to be conducted in the same manner as the initial election held on the question of the levy of the assessment.

(2) If a majority of the commercial catfish producers voting at the election vote against the levy of the assessment, the assessment shall not be levied as of the date ten (10) calendar days after the date of the election. The levy may be reapproved, in the same manner as the initial election and subject to the same vote requirements, at an election called by the board not earlier than twelve (12) months after the date of the previous election suspending the levy of the assessment.

(c)(1) The assessment imposed and levied by this section shall be collected by the Director of the Department of Finance and Administration from each seller of catfish feed, who shall add the assessment to the purchase price of catfish feed sold in this state to commercial catfish producers.

(2) Each seller of catfish feed, when remitting assessments collected

to the director, may deduct not more than one percent (1%) of the gross amount of the assessments to cover the cost of compliance.

History. Acts 1999, No. 790, § 8.

2-9-108. Budget.

(a) The Arkansas Catfish Promotion Board shall prepare an annual budget, a copy of which shall be maintained at the principal office of the board and shall be open for public inspection during business hours.

(b) The board shall be audited annually in accordance with generally accepted auditing procedures, and a copy of the audit shall be filed with the Legislative Joint Auditing Committee.

History. Acts 1999, No. 790, § 9.

2-9-109. Assessment records.

(a)(1) Every person required to pay the assessment provided for in this chapter shall keep a complete and accurate record of all catfish feed handled by him or her.

(2) The records shall be in such form and contain other information as the Arkansas Catfish Promotion Board shall prescribe by rule or regulation.

(3) The records shall be preserved for a period of two (2) years and shall be offered for inspection at any time upon written demand by the Director of the Department of Finance and Administration or his or her authorized agent or representative.

(b)(1) At such times as the director may require, every person required to pay the assessment provided for in this chapter shall submit reports or otherwise document any information deemed necessary for the efficient collection of the assessment imposed in this chapter.

(2) The director has the power to cause any authorized agent or representative to enter upon the premises of any person required to pay the assessment provided for in this chapter and examine or cause to be examined by the agent any books, papers, and records which deal in any way with the payment of the assessment or enforcement of the provisions of this chapter.

History. Acts 1999, No. 790, § 10.

2-9-110. Assessment refund.

(a) So long as the assessment on the sale of catfish feed continues to be levied as provided in this chapter, any catfish producer may request and receive a refund of such assessment, provided he or she makes a written application therefor with the Director of the Department of Finance and Administration within sixty (60) calendar days after the date of sale, supported by copies of sales slips from the seller of the catfish feed and a refund form approved by the Arkansas Catfish Promotion Board.

(b) The director shall create and approve a refund claim form.

History. Acts 1999, No. 790, § 11.

2-9-111. Penalty.

(a)(1) Any seller who fails to file a report, collect an assessment, or remit any assessment when due shall pay a penalty not to exceed five percent (5%) of the amount of the assessment that should have been collected or remitted, plus an additional penalty not to exceed one percent (1%) of the amount of the assessment that should have been collected or remitted for each month of delay, or fraction of a month, after the first month the report was required to be filed or the assessment became due.

(2) The penalty shall be paid to the Director of the Department of Finance and Administration and shall be disposed of in the same manner as funds derived from the payment of an assessment as provided in this chapter.

(b) The director shall collect the penalties levied in this section, together with the delinquent assessment, by any or all of the following methods:

(1) Voluntary payment; or

(2) Legal proceedings instituted in a court of competent jurisdiction seeking any remedies available, including, but not limited to, injunctive relief to enjoin any seller owing the assessment or penalties from engaging in business as a seller of catfish feed until the amount of the assessment due and all penalties are paid.

(c) Any person required to pay the assessment provided for in this chapter who refuses to allow full inspection of the premises or any book, record, or other document relating to the liability of the person for the assessment imposed or who shall hinder or in any way delay or prevent the inspection shall be guilty of a violation punishable by a fine not exceeding five hundred dollars (\$500).

History. Acts 1999, No. 790, § 3; 2005, substituted "or" for "and" in (b)(1); and No. 1994, § 5. substituted "violation" for "misdemeanor"

Amendments. The 2005 amendment in (c).

2-9-112. Arkansas Catfish Promotion Fund.

(a) There is created on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State, the Arkansas Catfish Promotion Fund.

(b) The fund shall consist of those special revenues from assessments as specified in this chapter, there to be used in such manner as the Arkansas Catfish Promotion Board deems appropriate for Arkansas catfish promotion and research and for the operation and maintenance of the board office and payment of expenses of the board members as set out in § 2-9-103.

History. Acts 1999, No. 790, § 12.

CHAPTER 10**ARKANSAS MILK STABILIZATION BOARD****SUBCHAPTER.****1. ARKANSAS MILK STABILIZATION BOARD ACT.****SUBCHAPTER 1 — ARKANSAS MILK STABILIZATION BOARD ACT****SECTION.****2-10-101. Title.****2-10-102. Findings — Purposes.****2-10-103. Arkansas Milk Stabilization Board.****SECTION.****2-10-104. Powers and duties of the Arkansas Milk Stabilization Board.**

Effective Dates. Acts 2007, No. 754, § 2: Apr. 2, 2007. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the dairy industry in this state is a valuable industry providing a product that is necessary for good nutrition; that the ability of dairy farms to provide a stable supply of pure and wholesome milk is a matter of great importance to the health and welfare of the people of this state; that the recent, dramatic price fluctuations threaten the viability and stability of the dairy industry of this state; that in order to safeguard this industry, a milk

stabilization board must immediately be created and a viable plan for the dairy industry submitted to the Legislative Council for its approval. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

2-10-101. Title.

This subchapter shall be known and may be cited as the "Arkansas Milk Stabilization Board Act".

History. Acts 2007, No. 754, § 1.

2-10-102. Findings — Purposes.

(a) The General Assembly finds that:

(1) The dairy industry is an essential agricultural activity of the State of Arkansas;

(2) Dairy farms, associated suppliers, marketers, processors, and retailers are an integral component of the state's economy;

(3) The ability of a dairy farm, associated supplier, marketer, processor, and retailer to provide a stable, local supply of pure and wholesome milk is a matter of great importance to the health and welfare of the people of this state;

(4) Dairy farms are an integral part of the state's rural communities;

(5) Dairy farms preserve land for agricultural purposes and provide needed economic stimuli for rural communities;

(6) Assurance of a fair and equitable price for dairy farmers ensures their ability to provide milk to the market and the vitality of the state's dairy industry and all the associated benefits of the industry;

(7) Recent, dramatic price fluctuations, with a pronounced downward trend, threaten the viability and stability of the dairy industry of this state; and

(8) The federal order system, implemented by the Agricultural Marketing Agreement Act of 1937, 7 U.S.C. § 601 et seq., established only minimum prices paid to producers for raw milk, without preempting the power of the state to regulate milk prices above the minimum levels so established.

(b) The purposes of this subchapter are to:

(1) Take all necessary steps to assure the continued viability of dairy farming in the state;

(2) Assure consumers of an adequate, local supply of pure and wholesome milk;

(3) Neither displace the federal order system nor encourage the merging of federal orders; and

(4) Encourage increased production to meet the state's need for quality milk.

History. Acts 2007, No. 754, § 1.

2-10-103. Arkansas Milk Stabilization Board.

(a) There is created no later than July 1, 2007, the Arkansas Milk Stabilization Board, to be composed of five (5) members appointed by the Governor as follows:

(1) Two (2) members who are actively and principally engaged in dairy farming in this state;

(2) One (1) member who is an Arkansas consumer;

(3) One (1) member who is an Arkansas milk processor; and

(4) One (1) member who is an Arkansas retailer.

(b) Each member appointed to the board shall be appointed for a term of five (5) years except that the initial members of the board shall be appointed for terms that result in:

(1) One (1) member's term expiring after one (1) year;

(2) One (1) member's term expiring after two (2) years;

(3) One (1) member's term expiring after three (3) years;

(4) One (1) member's term expiring after four (4) years; and

(5) One (1) member's term expiring after five (5) years;

(c) Members of the board shall draw lots to determine the length of the initial term.

(d)(1) Not less than thirty (30) calendar days prior to the expiration of the terms of the members of the board under subdivisions (a)(1) and (4) of this section, interested parties shall submit to the Governor the

names of nominees for the positions to be filled, and the Governor shall appoint the new members from each list of nominees.

(2) If no lists are submitted, the appointments shall be at the discretion of the Governor.

(3) Each member selected for the board shall serve for a term of five (5) years except as provided in subsection (b) of this section and until his or her successor is selected as provided in this subsection.

(4) A member of the board may be removed by a majority vote of the remaining board members for:

(A) Conviction of a felony;

(B) Failing to attend three (3) consecutive meetings; or

(C) No longer meeting the qualifications for his or her initial appointment.

(e) Upon a vacancy of a member of the board, the Governor shall make a new appointment within thirty (30) days.

(f) Members of the board shall organize immediately after their appointment and shall elect a chair, a vice chair, and a secretary-treasurer from the membership of the board, whose duties shall be those customarily exercised by those officers or specifically designated by the board.

(g)(1) Meetings of the board shall be called by the chair or by four (4) members of the board.

(2) Four (4) members of the board shall constitute a quorum for the transaction of business of the board.

(h) The members of the board shall receive no salary or other compensation for their services except that they may receive expense reimbursement in accordance with § 25-16-901 et seq. for attending meetings of the board.

(i) The Secretary of the Arkansas Agriculture Department and the Executive Director of the Arkansas Livestock and Poultry Commission shall assist the board when necessary by providing resources and guidance.

History. Acts 2007, No. 754, § 1.

2-10-104. Powers and duties of the Arkansas Milk Stabilization Board.

(a) The Arkansas Milk Stabilization Board shall:

(1) Administer this subchapter;

(2) Research other states to determine how those states support their dairy farmers;

(3) Investigate methods of milk production, dairy pricing, and support of the dairy industry;

(4) Create a plan to assist Arkansas dairy farmers that would be equitable to all parties in the state dairy industry and withstand legal challenges;

(5) By December 31, 2007, provide a copy of the proposed plan determined in subdivision (a)(4) of this section to the Secretary of the

Arkansas Agriculture Department and any other person or entity requesting a copy of the proposed plan;

(6) Provide a forty-five-day period for public comment on the proposed plan provided in subdivision (a)(5) of this section;

(7)(A) Create the final plan for submission to the Legislative Council following the public comment period; and

(8) Promulgate rules the board considers necessary or desirable to implement the final plan determined in subdivision (a)(7) of this section.

(b) The board shall submit its final plan as determined under subdivision (a)(7) and rules as determined under subdivision (a)(8) to the Legislative Council for review no later than March 1, 2008.

(c)(1) Once reviewed by the Legislative Council, the Arkansas Agriculture Department shall implement the plan.

(2) The board shall monitor progress and success of the plan.

(d) The board shall have jurisdiction over milk and milk products marketed in the State of Arkansas.

History. Acts 2007, No. 754, § 1.

CHAPTERS 11-14

[Reserved]

SUBTITLE 2. AGRONOMY

CHAPTER 15

GENERAL PROVISIONS

SUBCHAPTER.

1. ARKANSAS CROP AND RESEARCH FACILITY PROTECTION ACT.
2. ARKANSAS RICE CERTIFICATION ACT.

SUBCHAPTER 1 — ARKANSAS CROP AND RESEARCH FACILITY PROTECTION ACT

SECTION.

2-15-101. Arkansas Crop and Research Facilities Protection Act.

2-15-101. Arkansas Crop and Research Facilities Protection Act.

(a) This section shall be known and may be cited as the “Arkansas Crop and Research Facilities Protection Act”.

(b)(1) Any person or entity who willfully and knowingly damages or destroys any field crop product that is grown for personal or commercial purposes or for testing or research purposes in the context of a product development program in conjunction or coordination with a private

research facility or a university or any federal, state, or local government agency shall be liable for twice the value of the crop damaged or destroyed.

(2) In awarding damages under this section, the courts shall consider:

(A) The market value of the crop prior to damage or destruction; and

(B) Production, research, testing, replacement, and crop development costs directly related to the crop that has been damaged or destroyed as part of the value of the crop.

(3) Damages available under this section shall be limited to:

(A) Twice the market value of the crop prior to damage or destruction; plus

(B) Twice the actual damages involving production, research, testing, replacement, and crop development costs directly related to the crop that has been damaged or destroyed.

(c) This section shall not apply to any persons or entities when performing construction, land improvements, or excavation work in or upon any public right-of-way, public easement, or utility easement or who in good faith believe they are in or upon the right-of-way or easement.

History. Acts 2001, No. 1025, §§ 1-3.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of assembly, Agricultural Law, 24 U. Ark. Legislation, 2001 Arkansas General As- Little Rock L. Rev. 403.

SUBCHAPTER 2 — ARKANSAS RICE CERTIFICATION ACT [EFFECTIVE UNTIL JULY 1, 2009]

SECTION.

2-15-201. Title. [Effective until July 1, 2009.]

2-15-202. Definitions. [Effective until July 1, 2009.]

2-15-203. Prohibition of rice with characteristics of commercial impact. [Effective until July 1, 2009.]

2-15-204. Administration — Duties of the State Plant Board. [Effective until July 1, 2009.]

SECTION.

2-15-205. Scientific Review Committee. [Effective until July 1, 2009.]

2-15-206. Violations — Notice. [Effective until July 1, 2009.]

2-15-207. Exemptions. [Effective until July 1, 2009.]

2-15-208. Penalties. [Effective until July 1, 2009.]

Effective Dates. Acts 2005, No. 1238, § 2, provided: "This act shall expire on July 1, 2009."

Acts 2005, No. 1238, § 3: Aug. 1, 2005. Emergency clause provided: "It is found

and determined by the General Assembly of the State of Arkansas that rices identified as having characteristics of commercial impact may pose an economic threat to the well-being of the people of this

state; that the growing, harvesting, and selling of rice is an important part of this state's economy; and that it is necessary for this act to become effective on August 1, 2005, to avoid any additional detriment

to this state. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on August 1, 2005."

2-15-201. Title. [Effective until July 1, 2009.]

This subchapter shall be known and may be cited as the "Arkansas Rice Certification Act".

History. Acts 2005, No. 1238, § 1.

§ 2 provided: "This act shall expire on

Effective Dates. Acts 2005, No. 1238,

July 1, 2009."

2-15-202. Definitions. [Effective until July 1, 2009.]

As used in this subchapter:

(1) "Characteristics of commercial impact" means characteristics that may adversely affect the marketability of rice in the event of commingling with any other rice and includes, but is not limited to, those characteristics:

(A) That cannot be identified without the aid of specialized equipment or testing;

(B) That create a significant economic impact in their removal from commingled rice; and

(C) Whose removal from commingled rice is not feasible; and

(2) "Person" includes any individual, partnership, limited liability company, limited liability partnership, corporation, firm, company, or any other entity doing business in Arkansas.

History. Acts 2005, No. 1238, § 1.

§ 2, provided: "This act shall expire on

Effective Dates. Acts 2005, No. 1238,

July 1, 2009."

2-15-203. Prohibition of rice with characteristics of commercial impact. [Effective until July 1, 2009.]

No person may introduce, sell, plant, produce, harvest, transport, store, process, or otherwise handle rice identified as having characteristics of commercial impact, except in compliance with this subchapter and the rules adopted by the State Plant Board.

History. Acts 2005, No. 1238, § 1.

§ 2, provided: "This act shall expire on

Effective Dates. Acts 2005, No. 1238,

July 1, 2009."

2-15-204. Administration — Duties of the State Plant Board. [Effective until July 1, 2009.]

(a) The State Plant Board shall:

(1) Administer and enforce this subchapter;

(2) Promulgate rules to implement the purposes and requirements of this subchapter, including rules that will establish a penalty matrix for violations of this subchapter and the rules promulgated under this subchapter; and

(3) Receive and investigate complaints regarding alleged violations of this subchapter and rules promulgated by the board.

(b) The board may:

(1) Prohibit or place restrictions on the selling, planting, producing, harvesting, transporting, storing, processing, or other handling of rice identified as having characteristics of commercial impact; and

(2) Charge a reasonable fee to cover the cost of inspections and other activities permitted under this subchapter.

(c) All moneys received by the board under this subchapter and the rules adopted by the board shall be deposited in the Plant Board Fund to be used for carrying out the provisions of this subchapter.

History. Acts 2005, No. 1238, § 1.

Cross References. Plant Board Fund,

Effective Dates. Acts 2005, No. 1238, § 19-6-408.

§ 2, provided: "This act shall expire on July 1, 2009."

2-15-205. Scientific Review Committee. [Effective until July 1, 2009.]

(a) The State Plant Board may appoint a Scientific Review Committee.

(b) The committee shall review and make recommendations to the board concerning all matters contained in this subchapter, including:

(1) Identifying rice that has characteristics of commercial impact;

(2) Reviewing rice identified as having characteristics of commercial impact upon receipt of a petition from the purveyor of the rice;

(3) Recommending rules establishing terms and conditions for planting, producing, harvesting, selling, transporting, processing, storing, or otherwise handling rice identified pursuant to subdivision (b)(1) of this section; and

(4) Reviewing the efficacy of terms, conditions, and identity preservation programs imposed on the planting, producing, harvesting, transporting, drying, storing, or other handling of rice identified under subdivision (b)(1) of this section, using the most current industry standards and generally accepted scientific principles.

History. Acts 2005, No. 1238, § 1.

§ 2, provided: "This act shall expire on

Effective Dates. Acts 2005, No. 1238, July 1, 2009."

2-15-206. Violations — Notice. [Effective until July 1, 2009.]

(a) Upon receiving a complaint alleging that a person has violated this subchapter or a rule of the State Plant Board, the board shall provide notice to the person and an opportunity for the person to respond to the complaint.

(b) If the board determines that the complaint warrants further action, the board shall notify the person in writing of the board's decision.

(c) The board may seek injunctive relief, commence a civil action against the person, or seek other remedies provided by law.

History. Acts 2005, No. 1238, § 1. § 2, provided: "This act shall expire on
Effective Dates. Acts 2005, No. 1238, July 1, 2009."

2-15-207. Exemptions. [Effective until July 1, 2009.]

The provisions of this subchapter shall not apply to research conducted by a federal, state, or private entity, including an institution of higher education, which conforms to and is in compliance with all state and federal laws and rules for laboratory management practices.

History. Acts 2005, No. 1238, § 1. § 2, provided: "This act shall expire on
Effective Dates. Acts 2005, No. 1238, July 1, 2009."

2-15-208. Penalties. [Effective until July 1, 2009.]

(a)(1) The State Plant Board may impose a civil penalty for violation of § 2-15-203.

(2) The penalty shall not exceed one hundred thousand dollars (\$100,000).

(3) Each day of a continuing violation of § 2-15-203 is a separate violation.

(b) The board may bring an action in any court of competent jurisdiction to collect a penalty under this section and may recover all attorney's fees, costs, and expenses incurred by the board in bringing the action.

History. Acts 2005, No. 1238, § 1. § 2, provided: "This act shall expire on
Effective Dates. Acts 2005, No. 1238, July 1, 2009."

CHAPTER 16

PLANT DISEASE AND PEST CONTROL

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. PLANT ACT OF 1917.
3. EMERGENCY PLANT ACT OF 1921.
4. PESTICIDE CONTROL.
5. JOHNSON GRASS CONTROL AND ERADICATION.
6. ARKANSAS BOLL WEEVIL SUPPRESSION ERADICATION ACT.
7. ARKANSAS FIRE ANT ADVISORY BOARD.
8. THISTLE CONTROL AND ERADICATION.

Preambles. Acts 1931, No. 73 contained a preamble which read: "Whereas, the necessity for high grade planting seed

for agricultural crops is hereby recognized, the purpose of this act shall be to enable farmers to secure pure bred agri-

cultural seeds true to variety, free from noxious weed seeds and free from plant diseases transmittable through the agency of planting seed and free from insect infestation ... "

Acts 1971, No. 79 contained a preamble which read: "Whereas, the Alligator Weed poses a serious threat to the waterways and lands of this state, and the eradication of this plant is essential to the welfare of the State of Arkansas and its people; and

"Whereas, the United States Army Corps of Engineers desires to join with the State Plant Board in providing funds for an Alligator Weed Control Program, but Public Law 89-298 will not permit the Corps of Engineers to enter into this project unless the State of Arkansas shall agree to hold and save the United States free from claims that may occur from control operations ... "

Effective Dates. Acts 1917, No. 414, § 20: effective on passage. Emergency declared. Approved Mar. 28, 1917.

Acts 1927, No. 247, § 3: declared effective on passage.

Acts 1929, No. 197, § 4: effective on passage.

Acts 1939, No. 40, § 3: July 1, 1939.

Acts 1971, No. 79, § 3: Feb. 12, 1971. Emergency clause provided: "It is hereby found and determined by the General Assembly that alligator weed poses a serious threat to the waterways and lands of this state, and that the control and eradication of said alligator weed during its early stages of infestation in this state is of utmost urgency; that the United States Army Corps of Engineers has federal moneys available to assist the State Plant Board in carrying on an Alligator Weed Control and Eradication Program, and that the immediate passage of this act is necessary to enable the State Plant Board to enter into the necessary agreements with the United States Corps of Engineers to hold and save the United States free from claims that may occur from control operations, as required by Public Law 89-298. Therefore, an emergency is hereby declared to exist and this act being immediately necessary for the public peace, health and safety shall be in full force and effect after its passage and approval."

Acts 1975, No. 409, § 4: Mar. 14, 1975. Emergency clause provided: "It is hereby found and determined by the General As-

sembly that under the present law the Arkansas Forestry Association has no representation on the State Plant Board; that it is essential to the continued growth, development and success of the forestry industry in this state that it be given representation on the State Plant Board; that this act is designed to increase the membership of the State Plant Board and to provide that the additional member shall be a representative of the Arkansas Forestry Association; that this act should be given effect immediately in order to accomplish its purposes at the earliest possible date. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1983, No. 691, § 19: effective on close of business, June 30, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that the various boards, commissions, departments, agencies, and services transferred to the Department of Commerce under the provisions of Acts 1971, No. 38, as amended, could perform their duties more efficiently as independent agencies; that the agencies and services consolidated within the Department of Commerce under Acts 1971, No. 38, are so diverse in their purposes and duties that it is difficult for the Administrator of said Department to exert leadership in the operation of such agencies and programs; and, that the abolishment of the Department of Commerce and its central services would result in financial savings which could be best used for the support and operation of other essential services of government, and that the immediate passage of this act is necessary to provide for the repeal of the Department of Commerce and for the transition of the various departments, agencies, boards, commissions, and programs and services within said Department to an independent status, as provided herein. Therefore, an emergency is hereby declared to exist and this act, being immediately necessary for the preservation of the public peace, health, and safety, shall be in full force and effect as follows: Section 15 of this act shall be effective from and after March 1, 1983, and the remaining provisions of this

act shall be effective on the close of business June 30, 1983 and thereafter."

RESEARCH REFERENCES

Am. Jur. 3 Am. Jur. 2d, Agri., § 42 et seq.

C.J.S. 3 C.J.S., Agri., § 83 et seq.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

2-16-101. Destruction of trees — Compensation.

2-16-102. Date stamped on cotton insecticides — Penalty.

2-16-103. Alligator weed agreements.

2-16-104. Disposition of funds.

2-16-105. Fire Ant Poison Cost Sharing Program.

SECTION.

2-16-106. Recovery of quarantine costs.

2-16-107. Rules and regulations.

2-16-108. State Plant Board Operations and Facilities Construction Fund.

2-16-109. Turf purchased with state moneys.

Effective Dates. Acts 1993, No. 783, § 13: Mar. 29, 1993. Emergency clause provided: "It is hereby found and determined by the Seventy-Ninth General Assembly meeting in Regular Session that the provisions of this act are of critical importance to the state's ability to continue the duties, responsibilities, and functions of the State Plant Board. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1993, No. 1262, § 8: July 1, 1993. Emergency clause provided: "It is hereby found and determined by the Seventy-Ninth General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1993 is essential to the operation of the agency for which the appropriations in this Act are provided,

and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1993 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1993."

Acts 1995, No. 1304, § 8: Apr. 14, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that the provisions of this act are of critical importance to the state's ability to continue the duties, responsibilities, and functions of the Arkansas Bureau of Standards. Therefor [sic], an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

2-16-101. Destruction of trees — Compensation.

(a) The owner of any valuable pear trees, cedar trees, or other growing trees of real value which have been or may hereafter be cut down and destroyed without his or her consent by the order and direction of the State Plant Board, or by its officers, employees, agents, or inspectors, shall be entitled to compensation for the actual value of the trees cut down or destroyed, to be paid by the county in which the trees were growing.

(b)(1) The owner of the trees shall present to the county court his or her claim in writing, verified by his or her affidavit, stating the kind, number, and value of the trees and when and by what authority the trees were destroyed.

(2) The court shall allow from the county general fund such sum as the evidence shows the claimant is entitled to receive.

History. Acts 1927, No. 247, §§ 1, 2; Pope's Dig., §§ 2645, 2646; A.S.A. 1947, §§ 77-129, 77-130.

2-16-102. Date stamped on cotton insecticides — Penalty.

(a) Every person, firm, or corporation bagging any commercial cotton insecticide or poison shall stamp on each bag or on a tag attached to each bag the date on which the insecticide or poison was manufactured.

(b)(1) Any person, firm, or corporation failing or refusing to comply with the requirements of this section shall be guilty of a violation and upon conviction shall be fined in any sum not less than five dollars (\$5.00) nor more than one hundred dollars (\$100).

(2) Each bag or other container that is shipped without first having the date placed on the bag or container shall be a separate offense.

History. Acts 1959, No. 458, §§ 1, 2; A.S.A. 1947, §§ 77-212, 77-213; Acts 2005, No. 1994, § 6.

Publisher's Notes. Acts 1959, No. 458, §§ 1, 2, are also codified as § 20-20-101.

Amendments. The 2005 amendment substituted "violation" for "misdemeanor" in (b)(1); and substituted "the date placed" for "placed the date" in (b)(2).

2-16-103. Alligator weed agreements.

The State Plant Board is authorized to enter into agreements with the United States Army Corps of Engineers to hold and save the United States free from claims that may occur from control operations jointly carried on by the board and the United States Army Corps of Engineers, or carried on by the board under financial assistance from the United States Army Corps of Engineers for the control and eradication of alligator weed in Arkansas.

History. Acts 1971, No. 79, § 1; A.S.A. 1947, § 77-139.

2-16-104. Disposition of funds.

(a) All fees, interest, penalties, and costs collected by the State Plant Board as authorized by law shall be deposited in the State Treasury on or before the fifth day of the month next following the month of collection thereof.

(b) Upon receipt of the funds, the Treasurer of State shall, after deducting therefrom the collection charge authorized by law, credit the net amount to the credit of the Plant Board Fund to be used for the maintenance, operation, and improvement of the board.

(c) All fees, fines, penalties, moneys, and funds arising from all sources resulting from the enforcement, operation, investigation, application, and administration of the laws and regulations under the jurisdiction of the Arkansas Bureau of Standards of the State Plant Board and the sale of property resulting from said purposes, and all moneys, grants, and other sources of funding procured for the bureau, shall be deposited in the Plant Board Fund, or any successor fund, to be used solely for the maintenance, operation, and improvement of the bureau.

History. Acts 1957, No. 417, § 1; A.S.A. 1947, § 77-138; Acts 1995, No. 1304, § 4.

2-16-105. Fire Ant Poison Cost Sharing Program.

(a)(1) There is hereby established a program to be known as the "Fire Ant Poison Cost Sharing Program".

(2) This program shall be administered by the State Plant Board; which shall have the authority to establish the necessary rules, regulations, and procedures for the administration of the program.

(b)(1) The board shall purchase the necessary chemicals for the eradication of fire ants and distribute such chemicals to the various counties of the state based upon the requests received from eligible purchasers in the county.

(2) The chemicals made available by the board shall become the responsibility of the county judge who shall oversee the safe storage and distribution of such chemicals under the direction of the University of Arkansas Cooperative Extension Service.

(c)(1) It shall be the duty of the University of Arkansas Cooperative Extension Service to collect moneys received from the distribution and sale of such fire ant poison chemicals as determined by the board, and remit such moneys to the board on a monthly basis.

(2) The moneys generated from the sale of fire ant poison chemicals and received by the board from the University of Arkansas Cooperative Extension Service shall be deposited into the State Treasury to the credit of the Plant Board Fund as a nonrevenue receipt refund to expenditure, there to be used by the board to purchase additional fire ant poison chemicals for distribution to the various counties of the state for fire ant control.

History. Acts 1993, No. 1262, § 2.

2-16-106. Recovery of quarantine costs.

The State Plant Board is empowered to recover any identifiable expenses from the owner or other person in possession or control of the property upon which it enforces, maintains, and administers any quarantine that is imposed due to infestations or infections of insect pests, diseases, or noxious weeds. Whenever the owner or other person cannot be found or shall fail, neglect, or refuse to reimburse the board for incurred quarantine expenses, the board shall have and enforce a lien for such expenses upon the property upon which it enforces, maintains, or administers any quarantine, in the same manner as liens are had and enforced upon property for labor and materials furnished by virtue of contract with the owner.

History. Acts 1993, No. 783, § 8.

2-16-107. Rules and regulations.

The State Plant Board is hereby authorized to promulgate such rules and regulations as are necessary to administer the fees, rates, tolls, or charges for services established by §§ 2-16-407(f), 2-17-213, 2-17-238, 2-19-209(a), and 2-19-307(a) and is directed to prescribe and collect such fees, rates, tolls, or charges for the services delivered by the board in such manner as may be necessary to support the programs of the board as directed by the Governor and the General Assembly.

History. Acts 1993, No. 783, § 9.

2-16-108. State Plant Board Operations and Facilities Construction Fund.

(a) As used in this section:

(1) "Board" means the State Plant Board; and

(2) "Fund" means the State Plant Board Operations and Facilities Construction Fund.

(b)(1) There is created in accordance with §§ 19-4-801 — 19-4-803, 19-4-805, and 19-4-806 and the Revenue Classification Law, § 19-6-101 et seq., a cash fund entitled the State Plant Board Operations and Facilities Construction Fund, which shall be maintained in such depository bank or banks as may be designated from time to time by the board.

(2)(A) The first two hundred thousand dollars (\$200,000) in each fiscal year of all fees, interest, penalties, and costs collected by the board that constitute the special revenues specified in § 19-6-301(51) and all income, interest, and earnings thereof are declared to be cash funds to be used solely for paying the cost of operations and maintenance of the board and the financing of the acquisition, construction, and maintenance of facilities for the board's operations,

including any additions, extensions, and improvements thereto, the renovation thereof, and the equipping of such facilities.

(B) Such cash funds shall not be deemed to be a part of the State Treasury for any purpose, including, without limitation, the provisions of Arkansas Constitution, Article 5, § 29, Article 16, § 12, or Arkansas Constitution, Amendment 20, or any other constitutional or statutory provision.

(3) The fund shall be held and the amounts therein invested by the board in accordance with the laws of the state pertaining to cash funds. The board may also pledge and use moneys in the fund to provide for the repayment of obligations issued by the Arkansas Development Finance Authority pursuant to the State Agencies Facilities Acquisition Act of 1991, § 22-3-1401 et seq., to accomplish the purposes specified in subdivision (b)(2)(A) of this section and to pay the costs and expenses related to the issuance of such obligations.

(c) The provisions of §§ 22-3-1402(c) and 22-3-1406 shall not be applicable in any respect to the acquisition, construction, extension, or renovation of or the equipping of facilities for the board and shall not under any circumstances constitute a limitation on or prohibition to the financing of the capital improvements by the authority.

(d) On July 30, 1999, all moneys then held in the Plant Board Fund created by § 19-6-408 that were derived from the special revenues described in subdivision (b)(2)(A) of this section shall be transferred to the State Plant Board Operations and Facilities Construction Fund, except that the amount transferred shall not exceed the maximum amount provided in subdivision (b)(2)(A) of this section.

History. Acts 1999, No. 846, § 1; 2001, No. 1553, § 28. transferred by Acts 2001, No. 1553, § 28 and was formerly codified as §§ 19-5-1092

A.C.R.C. Notes. This section was — 19-5-1094.

2-16-109. Turf purchased with state moneys.

(a) As used in this section, “turf” means field-cultivated turf grass sod consisting of grass varieties tested by the National Turfgrass Evaluation Program.

(b) Turf shall be certified by the State Plant Board if the turf is:

- (1) Purchased with state moneys, either directly or indirectly; or
- (2) Used in a project conducted:

(A) By a state agency, department, board, or commission; or

(B) Under a contract with the State of Arkansas.

(c) Cool seasons variety blends of turf shall be grown from blue tag certified seed under the blue tag certification program of the Association of Official Seed Certifying Agencies.

History. Acts 2005, No. 1264, § 1.

SUBCHAPTER 2 — PLANT ACT OF 1917

SECTION.

- 2-16-201. Title.
- 2-16-202. Definitions.
- 2-16-203. Penalty.
- 2-16-204. Actions of agents.
- 2-16-205. Effect of federal law.
- 2-16-206. State Plant Board.
- 2-16-207. Powers and duties of board.
- 2-16-208. Director of board.
- 2-16-209. Transportation, etc., of insect pests, etc., generally.

SECTION.

- 2-16-210. Certificate of inspection required.
- 2-16-211. Eradication of pests, diseases, or noxious weeds.
- 2-16-212. Regulation of pests or diseases within state.
- 2-16-213. Receiving noncomplying plants, etc.
- 2-16-214. Review of rules, etc.

Effective Dates. Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor [sic], it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1997, No. 317, § 8: Mar. 3, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 10 of the First Extraordinary Session of 1995 abolished the Joint Interim Committee on Agriculture and Economic Development and in its place established separate House and Senate Committees; that various sections of the Arkansas Code refer to the Joint Interim Committee on Agriculture and Economic

Development and should be corrected to refer to the House and Senate Interim Committees; that this act so provides; and that this act should go into effect immediately in order to make the laws compatible as soon as possible. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2003, No. 1473, § 74: July 1, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act includes technical corrects to Act 923 of 2003 which establishes the classification and compensation levels of state employees covered by the provisions of the Uniform Classification and Compensation Act; that Act 923 of 2003 will become effective on July 1, 2003; and that to avoid confusion this act must also [become] effective on July 1, 2003. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2003."

2-16-201. Title.

This subchapter shall be known as the "Arkansas Plant Act of 1917".

History. Acts 1917, No. 414, § 1; C. & M. Dig., § 8024; Pope's Dig., § 12333; A.S.A. 1947, § 77-101.

2-16-202. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Insect pests and diseases" means insect pests and diseases injurious to plants and plant products of this state including any of the stages of development of such insects and diseases;

(2) "Plants and plant products" means trees, shrubs, vines, forage, and cereal plants, and all other plants; cuttings, grafts, scions, buds, and all other parts of plants; and fruit, vegetables, roots, bulbs, seeds, wood, lumber, and all other plant products;

(3) "Places" means vessels, cars, other vehicles, buildings, docks, nurseries, orchards, and other premises where plants and plant products are grown, kept, or handled; and

(4) "Persons" means individuals, associations, partnerships, and corporations.

History. Acts 1917, No. 414, § 2; C. & M. Dig., § 8025; Pope's Dig., § 12334; A.S.A. 1947, § 77-102.

2-16-203. Penalty.

(a) Any person who shall violate any provision or requirement of this subchapter or the rules and regulations made or of any notice given pursuant to this subchapter or who shall forge, counterfeit, deface, destroy, or wrongfully use any certificate provided for in this subchapter or in the rules and regulations made pursuant to this subchapter shall be guilty of a violation, and upon conviction he or she shall be punished by a fine of not more than one hundred dollars (\$100).

(b)(1)(A) In a lawful proceeding respecting licensing, as defined in the Arkansas Administrative Procedure Act, § 25-15-201 et seq., in addition to or in lieu of any other lawful disciplinary action, the State Plant Board may assess a civil penalty of not more than one thousand dollars (\$1,000) for each violation of any statute, rule, or order enforceable by the board.

(B) In no case shall a single application or drift incident by a pesticide applicator be considered multiple violations based on the number of complaints.

(C) In no case shall the failure to meet minimum treating standards, except those that require a termiticide application, be considered a violation and subject to a civil penalty.

(2)(A) The board shall by rule establish a schedule designating the minimum and maximum civil penalty that may be assessed under

this section for violation of each statute, rule, or order over which it has regulatory control.

(B) The board may promulgate any other regulation necessary to carry out the intent of this section.

(3) In the event of nonpayment of any civil penalty lawfully assessed pursuant to subdivision (b)(1) of this section, the civil penalty shall be recoverable in the name of the state by the Attorney General in Pulaski County Circuit Court or in the circuit court of the county in which the violation occurred.

(4)(A) All sums paid or recovered under this section shall be deposited into the State Treasury.

(B)(i) Sums collected under special revenue programs shall be deposited in the Plant Board Fund.

(ii) Sums collected under general services programs shall be deposited into the State General Services Fund Account.

(5) All rules and regulations promulgated pursuant to this section shall be reviewed by the House Interim Committee on Agriculture, Forestry, and Economic Development and the Senate Interim Committee on Agriculture, Forestry, and Economic Development or subcommittees of the House Interim Committee on Agriculture, Forestry, and Economic Development and the Senate Interim Committee on Agriculture, Forestry, and Economic Development.

History. Acts 1917, No. 414, § 15; C. & M. Dig., § 8038; Pope's Dig., § 12346; A.S.A. 1947, § 77-114; Acts 1995, No. 141, § 1; 1995, No. 167, § 1; 1997, No. 317, § 1; 2003, No. 1473, § 1; 2005, No. 1994, § 7.

Publisher's Notes. The reference to § 17-37-101 et seq., Sections III A, III B, III C, and III D in subdivision (b)(1)(B)

apparently refers to the State Plant Board regulations.

The reference to the code section number in Title 17 has been updated to reflect the 1995 realphabetization of that title.

Amendments. The 2005 amendment substituted "violation" for "misdemeanor" in (a).

CASE NOTES

ANALYSIS

Proof.

Regulations.

Violation of Rule.

Proof.

In a prosecution for selling and offering for sale nursery stock infected with a disease in violation of a rule of the State Plant Board, the state was not required to show that the sale was made with knowledge that the trees were so affected. *Jacobs v. State*, 155 Ark. 95, 243 S.W. 952 (1922).

Regulations.

Arkansas State Plant Board, in a pro-

ceeding respecting licensing, properly adopted its own set of Pesticide Enforcement Response Regulations that included a penalty matrix by which the Board determined the nature of a violation and assessed its severity and the appropriate sanction. *Arkansas State Plant Bd. v. Bullock*, 345 Ark. 373, 48 S.W.3d 516 (2001).

Violation of Rule.

Rule of State Plant Board is not void for failure to prescribe a penalty since the penalty is provided by this section. *Howard v. State*, 154 Ark. 430, 242 S.W. 818 (1922).

2-16-204. Actions of agents.

In construing and enforcing the provisions of this subchapter, the act, omission, or failure of any official agent or other person acting for or employed by any person, association, partnership, or corporation within the scope of his or her employment or office shall, in every case, also be deemed the act, omission, or failure of the person, association, partnership, or corporation as well as that of the person.

History. Acts 1917, No. 414, § 16; C. & M. Dig., § 8039; Pope's Dig., § 12347; A.S.A. 1947, § 77-115.

2-16-205. Effect of federal law.

This subchapter shall not be so construed or enforced as to conflict in any way with any act of Congress regulating the movement of plants and plant products in interstate or foreign commerce.

History. Acts 1917, No. 414, § 17; C. & M. Dig., § 8040; Pope's Dig., § 12348; A.S.A. 1947, § 77-116.

2-16-206. State Plant Board.

(a) There is created and established a State Plant Board, composed of sixteen (16) members, as follows:

(1) The head of the Department of Entomology, University of Arkansas College of Agriculture;

(2) The head of the Department of Plant Pathology, University of Arkansas College of Agriculture;

(3) A practical cotton grower, actively engaged in the business, to be appointed by the Governor;

(4) One (1) member to represent the Arkansas fertilizer and cotton oil mills, actively engaged in the business, to be appointed by the Governor;

(5) A practical rice grower, actively engaged in the business, to be appointed by the Governor;

(6) A practical horticulturist, actively engaged in the business, to be elected by the Arkansas State Horticultural Society;

(7) A nurseryman, actively engaged in the business, to be elected by the Arkansas Green Industry Association;

(8) A practical seed grower, actively engaged in the business, to be elected by the Arkansas Seed Growers Association;

(9) A pest control operator, actively engaged in the business, to be elected by the Arkansas Pest Control Association, Inc.;

(10) A seed dealer, actively engaged in the business, to be elected by the Arkansas Seed Dealers Association;

(11) A feed manufacturer, actively engaged in the business, to be elected by the Arkansas Feed Manufacturers Association;

(12) A pesticide manufacturer, actively engaged in the business, to be elected by the Arkansas Agricultural Pesticide Association;

(13) One (1) member to represent the Arkansas Agricultural Aviation Association, to be elected by the Arkansas Agricultural Aviation Association;

(14) One (1) member to represent the Arkansas Forestry Association, to be elected by the Arkansas Forestry Association; and

(15) Two (2) farmers actively and principally engaged in farming in this state, appointed by the Governor.

(b) Board members shall serve a term of two (2) years or until such time as a successor has been elected or appointed as herein provided. A majority of the members of the board shall constitute a quorum for all purposes.

(c) The chair, vice chair, and secretary-treasurer shall be elected by the members of the board. The board shall designate some official or employee of the board to serve as disbursing officer of the board.

(d) Meetings of the board shall be called by the chair or by four (4) members of the board.

(e) The members shall serve without compensation but may receive expense reimbursements in accordance with § 25-16-901 et seq. and shall be authorized to provide a suitable office where the meetings of the board may be held and its records kept.

(f) If necessary to provide suitable space for its offices, laboratories, and other needs, the board may buy property, build buildings, or lease property for a period covering not more than fifteen (15) years from the date of lease.

History. Acts 1917, No. 414, § 3; C. & M. Dig., § 8026; Acts 1929, No. 197, § 1; 1931, No. 73, § 2; 1935, No. 97, § 1; Pope's Dig., § 12335; Acts 1953, No. 408, § 1; 1955, No. 239, § 1; 1961, No. 144, § 1; 1967, No. 77, § 1; 1971, No. 276, § 1; 1975, No. 409, § 1; A.S.A. 1947, § 77-103; Acts 1997, No. 250, § 2.

Publisher's Notes. Acts 1967, No. 77, § 3; Acts 1971, No. 276, § 2; and Acts 1975, No. 409, § 2, all provided that it was the intent of these acts to add members to the State Plant Board and that the addition of the members would not affect the term of any member then serving on the board. The terms of the members of the board are now arranged so that 16 terms expire every two years.

Acts 1983, No. 691, § 11, provided, in part, that the State Plant Board and its

powers, functions, and duties, which had been transferred to the Department of Commerce by Acts 1971, No. 38, § 16, would be separated from the Department of Commerce and would be an independent agency of state government, to function in the same manner it functioned prior to its transfer to the Department of Commerce.

Acts 1993, Nos. 610 and 624, § 1, provided: "The Arkansas Bureau of Standards, created by Act 482 of 1963, as amended, the same being A.C.A. 4-18-201 et seq., and its functions, powers, duties, assets, properties, and appropriations are transferred by a type 2 transfer [see § 25-2-105] to the State Plant Board."

Cross References. Division of Agriculture — Service on boards or commissions, § 6-64-106.

2-16-207. Powers and duties of board.

(a)(1) The State Plant Board shall keep itself informed as to the varieties of insect pests, diseases, and noxious weeds and the origin, locality, nature, and appearance thereof; the manner in which they are disseminated; and the approved methods of treatment and eradication.

(2) Every such insect pest, disease, and noxious weed, and every plant and plant product infested or infected is declared to be a public nuisance.

(b)(1) The board in its rules and regulations made pursuant to this subchapter shall list the insect pests, diseases, and noxious weeds, of which it shall find that the introduction into or the dissemination within the state should be prevented in order to safeguard the plants and plant products of this state, and the list shall include the plants and plant products or other substances on or in which these pests may be carried.

(2) Every person who has knowledge of the presence of any insect pest, disease, or noxious weed listed as required in this section in the rules and regulations made pursuant to this subchapter, in or upon any place, shall immediately report it to the board or inspectors thereof, giving such detailed information relative thereto as he or she may have.

(3) Every person who deals in or engages in the sale of plants or plant products shall furnish to the board or its inspectors, when requested, a statement of the names and addresses of the persons from whom and the localities where he or she purchased or obtained the plant and plant products.

(c)(1) The board shall make rules and regulations for carrying out the provisions and requirements of this subchapter including rules and regulations under which its inspectors and other employees shall:

(A) Inspect places, plants and plant products, and things and substances used or connected herewith;

(B) Investigate, control, eradicate, and prevent the dissemination of insect pests, diseases, and noxious weeds; and

(C) Supervise or cause the treatment, cutting, and destruction of infected or infested plants and plant products.

(2) For the purpose of preventing fraud and misrepresentation, the board shall make rules and regulations governing the transportation, distribution, or sale of sorghum seed, hybrid corn seed, and other seeds intended for planting.

(d) For the purpose of carrying out the provisions and requirements of this subchapter, of the rules and regulations made, and notices given pursuant thereto, the board and its inspectors and employees shall have power to enter into or upon any place and to open any bundle, package, or other container of plants or plant products.

History. Acts 1917, No. 414, §§ 5, 6, 13; C. & M. Dig., §§ 8028, 8029, 8036; Acts 1937, No. 203, § 1; Pope's Dig., §§ 12337, 12338, 12344; Acts 1939, No. 40, § 1;

1943, No. 44, § 1; A.S.A. 1947, §§ 77-105, 77-106, 77-112.

Publisher's Notes. Acts 1949, No. 327, § 1, provided that all of the powers, du-

ties, functions, and authority vested in the Director of the Department of Finance and Administration governing the manufacture, sale, distribution, inspection, and control of concentrated commercial feeds, commercial fertilizers, and fertilizer materials and cottonseed meal would be transferred to the State Plant Board.

Cross References. Administration of Soil Amendment Act of 1977, § 2-19-404.

Commercial feeding stuffs, § 2-37-101 et seq.

Duty to administer and enforce the Fruit and Vegetable Labeling Act of 1947, § 2-20-306.

Duty to administer Pesticide Use and Application Act, § 20-20-205.

Duty to carry out provisions of Pest Control Law, § 17-37-105.

Enforcement of Agricultural Liming Materials Act, § 2-19-308.

Fertilizers, § 2-19-201 et seq.

Power to investigate and certify to varietal purity and fitness for planting of agricultural seed, rules and regulations, §§ 2-18-103, 2-18-104.

Powers and duties under Agricultural Products Grading Act of 1925, § 2-20-101 et seq.

CASE NOTES

Rules and Regulations.

Rule is not invalid because no penalty is prescribed since § 2-16-203 prescribes the penalty. *Howard v. State*, 154 Ark. 430, 242 S.W. 818 (1922).

The State Plant Board was authorized to adopt and promulgate a rule requiring cedar trees infected with rust within a certain distance of an orchard to be cut

down, and one disobeying such an order was guilty of a misdemeanor. *Howard v. State*, 154 Ark. 430, 242 S.W. 818 (1922).

A rule of the State Plant Board prohibiting the sale of infected nursery stock has the force and effect of a statute and should be construed as if it were one. *Jacobs v. State*, 155 Ark. 95, 243 S.W. 952 (1922).

2-16-208. Director of board.

(a) For the purpose of carrying out the provisions of this subchapter, the State Plant Board shall employ, prescribe the duties of, and fix the compensation for a Director of the State Plant Board. With the approval of the board, the director may employ such inspectors or other employees as may be required and may incur such expenses as may be necessary within the limits of the appropriation made by law.

(b) The director shall be appointed by the board with the approval of the Governor and shall serve at the pleasure of the Governor.

(c)(1) The director shall furnish a bond of five thousand dollars (\$5,000) with sufficient sureties approved by the board for the faithful performance of his or her duties of this subchapter and the rules and regulations of the board.

(2) Any person suffering damage by reason of the acts or omissions of the chief inspector or his or her duly authorized deputies or employees may bring action on the bond for damages.

(3) The board may require to indemnify the director that similar bonds shall be furnished by deputies, inspectors, or employees.

(d) The board shall cooperate with other departments, boards, and officers of this state and of the United States as far as possible.

History. Acts 1917, No. 414, § 4; C. & M. Dig., § 8027; Acts 1921, No. 664, § 1; Pope's Dig., § 12336; Acts 1953, No. 360,

§ 1; 1983, No. 691, § 11; A.S.A. 1947, §§ 77-103.2, 77-104.

A.C.R.C. Notes. The operation of sub-

section (c) of this section was suspended by adoption of a self-insured fidelity bond program for the public officers, officials and employees, effective July 20, 1987, pursuant to § 21-2-701 et seq. The subsection may again become effective upon cessation of coverage under that program. See § 21-2-703.

Publisher's Notes. Acts 1967, No. 77,

§ 2, provided that the title of the "Chief Inspector of the State Plant Board" would be changed to "Director, State Plant Board" and that the director would perform all powers and duties and assume all responsibilities formerly vested by law in the Chief Inspector of the State Plant Board.

2-16-209. Transportation, etc., of insect pests, etc., generally.

(a) Transportation through or into or transportation, distribution, or sale within the state of any insect pest, plant disease, noxious weed, or any plant, plant product, or other substance, listed in the rules and regulations of the State Plant Board as required under § 2-16-207, or of sorghum seed, hybrid corn seed, or other planting seeds for the transportation, distribution, or sale of which the board has made rules and regulations under this subchapter is prohibited except under such safeguards as may be provided for in the rules and regulations of the board.

(b) To cover expenses incident to inspection or treatment or incident to the issuance of such permits or certificates as may be required by the board's regulations made under this subchapter, the board may require the payment of reasonable fees which shall be deposited in the manner prescribed by § 2-16-210 to be used in carrying out the provisions of this subchapter.

(c) The board is empowered to require that a shipper who ships plants from another state into Arkansas must meet any and all requirements which the shipper's state would make of an Arkansas shipper who ships plants into that state.

(d) Inspectors of the board on issuance of a written notice may cause to be held or to be sent out of the state or to be destroyed any plant, plant product, or other substance which has been brought into or is being transported within the state in violation of any state or federal law or regulation. They may stop and detain for inspection any person, car, or other carrier.

History. Acts 1917, No. 414, § 11; C. & M. Dig., § 8034; Acts 1929, No. 197, § 3; 1937, No. 203, § 2; Pope's Dig., § 12342; Acts 1939, No. 40, § 2; 1943, No. 44, § 2; A.S.A. 1947, § 77-110.

2-16-210. Certificate of inspection required.

(a) It shall be unlawful for any person to sell, give away, carry, ship, or deliver for carriage or shipment, within this state, any plants or plant products listed as required by this subchapter unless the plants and plant products have been officially inspected and a certificate has been issued by an inspector of the State Plant Board. This certificate shall state that the plants or plant products have been inspected and found to be apparently free from insect pests and diseases. It shall also

be unlawful for any person to sell, give away, carry, ship, or deliver for carriage any plants or plant products unless the plants or plant products bear a certificate issued by an inspector of the board. This certificate shall show that the place on which the plants or plant products were grown has been inspected and found to be apparently free from insect pests and diseases and any other facts provided for in the rules and regulations made pursuant to this subchapter.

(b) This section shall not apply to plants and plant products not affected by rules and regulations made pursuant to § 2-16-211 when the plants or plant products are disposed of in local trade.

(c) When any person shall notify the board of impending shipments of plants or plant products and the board fails to provide the proper inspector to inspect the plants or plant products under the rules and regulations made pursuant to this subchapter, the person desiring to make the shipment may do so without being liable to provisions of this section.

(d) For the issuance of the certificate as provided for in this section, the board may require the payment of a reasonable fee to cover the expenses of the inspection and certification. If it shall be found at any time that a certificate of inspection, issued or accepted pursuant to the provisions of this section, is being used in connection with plants and plant products which are infested or infected with insect pests or diseases, its further use may be prohibited, subject to such inspection and other disposition of the plants and plant products involved as may be provided for by the board.

(e) All moneys collected by the board under this section or under § 2-16-211 or § 2-16-214 shall be deposited with the treasurer of the board and shall be used in carrying out the provisions of this subchapter.

History. Acts 1917, No. 414, § 9; C. & M. Dig., § 8032; Pope's Dig., § 12340; A.S.A. 1947, § 77-108.

this section relating to the disposition of moneys may be affected by § 19-5-101 et seq. and by § 2-16-104.

Publisher's Notes. The provisions of

2-16-211. Eradication of pests, diseases, or noxious weeds.

(a) Whenever the inspection discloses that any places, plants, plant products, or things and substances used or connected therewith, are infested or infected with any insect pest, disease, or noxious weed, listed, as required by § 2-16-207 in rules and regulations made pursuant to this subchapter, written notice thereof shall be given the owner or other person in possession or control of the place where found, and the owner or other person shall proceed to control, eradicate, or prevent the dissemination of the insect pest, disease, or noxious weed. The owner shall then remove, cut, or destroy infested or infected plants and plant products or things and substances used or connected therewith, within the time and in the manner prescribed by the notice or the rules and regulations made pursuant to this subchapter.

(b) Whenever the owner or other person cannot be found or shall fail, neglect, or refuse to obey the requirements of the notice and the rules and regulations made pursuant to this subchapter, the requirements shall be carried out by the inspector or other employees of the State Plant Board. The board shall have and enforce a lien for the expenses thereof against the place in which or upon which the expenses were incurred in the same manner as liens are had and enforced upon buildings, lots, wharves, and piers for labor and materials furnished by virtue of contract with the owner.

History. Acts 1917, No. 414, § 7; C. & Pope's Dig., § 12339; A.S.A. 1947, § 77-M. Dig., § 8030; Acts 1937, No. 203, § 1; 107.

2-16-212. Regulation of pests or diseases within state.

(a) Whenever the State Plant Board shall find that there exists in this state or any part thereof any insect, disease, or noxious weed and that its dissemination should be controlled or prevented, the board may give notice thereof, specifying the plants and plant products infested, infected, or likely to become infested or infected therewith.

(b) The movement, planting, or other use of any plant, plant products, or other thing or substance specified in the notice as likely to carry and disseminate the insect pest, disease, or noxious weed, except under such safeguard as may be provided in the rules and regulations made by the board, shall be prohibited within such area as may be designated in the public notice until the board shall find that the danger of the dissemination of the insect, disease, or noxious weed has ceased to exist, of which the board shall give public notice.

(c) Before the order of prohibition shall be issued, a public hearing, with due public notice thereof, shall be held by the board, at which hearing interested persons may appear in person or by attorney.

History. Acts 1917, No. 414, § 12; C. & Pope's Dig., § 12343; A.S.A. 1947, § 77-M. Dig., § 8035; Acts 1937, No. 203, § 1; 111.

2-16-213. Receiving noncomplying plants, etc.

Any person in this state who receives any plant or plant product sold, given away, carried, shipped, or delivered for carriage or shipment within this state, as to which the requirements of § 2-16-210 have not been complied with, shall immediately inform the State Plant Board or an inspector thereof and isolate and hold the plant product unopened or unused subject to such inspection and other disposition as may be provided for by the board.

History. Acts 1917, No. 414, § 10; C. & M. Dig., § 8033; Pope's Dig., § 12341; A.S.A. 1947, § 77-109.

2-16-214. Review of rules, etc.

Any person affected by any rules and regulations made or notice given, pursuant to this subchapter, may have a review thereof by the State Plant Board for the purposes of having the rules, regulations, or notice modified, suspended, or withdrawn, and, pending the review, the rules and regulations or notice shall be suspended.

History. Acts 1917, No. 414, § 14; C. & M. Dig., § 8037; Pope's Dig., § 12345; A.S.A. 1947, § 77-113.

SUBCHAPTER 3 — EMERGENCY PLANT ACT OF 1921

SECTION.

- 2-16-301. Title.
- 2-16-302. Definitions.
- 2-16-303. Provisions supplemental.
- 2-16-304. Penalties — Prosecution.
- 2-16-305. Actions of agents.
- 2-16-306. Enforcement.
- 2-16-307. Infested zones — Emergency proclamation.

SECTION.

- 2-16-308. Infested zones — Regulation by State Plant Board — Destruction of plants, etc.
- 2-16-309. Claims committee.
- 2-16-310. Annual report.

Effective Dates. Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared

to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor [sic], it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

2-16-301. Title.

This subchapter shall be known as the "Arkansas Emergency Plant Act of 1921".

History. Acts 1921, No. 519, § 1; A.S.A. 1947, § 77-117.

2-16-302. Definitions.

For the purposes of this subchapter, unless the context otherwise requires, the terms and definitions set forth in § 2-16-202 are adopted and made a part of this subchapter. In addition, the term "dangerous

insect pest and plant diseases" shall be construed to mean such insect pests and plant diseases as the pink bollworm, the Mexican bean beetle, potato wart disease, "take all", and such other insect pests and plant diseases, the prevalence of which would threaten an established agricultural industry in the state.

History. Acts 1921, No. 519, § 2; Pope's Dig., § 12358; A.S.A. 1947, § 77-118.

2-16-303. Provisions supplemental.

This subchapter shall not be construed as limiting the authority conferred upon the State Plant Board by the Arkansas Plant Act of 1917, § 2-16-201 et seq., but shall be construed as supplemental thereto.

History. Acts 1921, No. 519, § 12; Pope's Dig., § 12368; A.S.A. 1947, § 77-128.

2-16-304. Penalties — Prosecution.

(a) Any person who shall violate any provision of this subchapter or who shall interfere with any member of the State Plant Board or any inspector or employee while engaged in the performance of his or her duties under this subchapter shall be guilty of a Class A misdemeanor.

(b)(1) Upon information furnished by the board, it shall be the duty of the Attorney General or the prosecuting attorney of the district in which an alleged violation of any provision of this subchapter may occur to enforce the provisions of this subchapter by proceedings in any court of competent jurisdiction.

(2) If the remedy elected to be pursued is by writ of injunction, no court of this state shall have the right to set aside or stay the writ of injunction prior to a hearing upon the merits.

History. Acts 1921, No. 519, § 8; Pope's Dig., § 12364; A.S.A. 1947, § 77-124; Acts 2005, No. 1994, § 331.

in (a), inserted "or her" and "Class A" in the first sentence and deleted the former second sentence.

Amendments. The 2005 amendment,

2-16-305. Actions of agents.

In construing and enforcing the provisions of this subchapter, the act, omission, or failure of an official, agent, or other person acting for or employed by any person, association, partnership, or corporation within the scope of his or her employment or office shall, in every case, also be deemed the act, omission, or failure of the person, association, partnership, or corporation as well as that of the person acting as the agent.

History. Acts 1921, No. 519, § 10; Pope's Dig., § 12366; A.S.A. 1947, § 77-126.

2-16-306. Enforcement.

(a)(1) The provisions of this subchapter and the rules and regulations promulgated hereunder shall be carried out by the Director of the State Plant Board, who shall serve without extra compensation.

(2) The director may, with the approval of the board, employ such inspectors or other employees as may be required and may incur such expenses as may be necessary, within the limits of the appropriation made by law or declared by the Governor.

(b) For the purposes of carrying out the requirements of this subchapter, and the rules and regulations made and notices given pursuant thereto, the board and its inspectors and employees shall have the right to enter into or upon any place and for purpose of inspection to open any bundle, package, or other container of plants, plant products, articles, or substances.

(c)(1) In the enforcement of this subchapter and of the rules and regulations made pursuant thereto, the board may summon witnesses; require the production of any books, papers, or documents it deems material; administer oaths; and hear witnesses.

(2) It shall be the duty of each sheriff in the state to serve a summons when requested by the board.

History. Acts 1921, No. 519, §§ 3, 7, 9;
Pope's Dig., §§ 12359, 12363, 12365;
A.S.A. 1947, §§ 77-119, 77-123, 77-125.

2-16-307. Infested zones — Emergency proclamation.

(a) Upon satisfactory information acquired in any manner or upon information furnished by the State Plant Board, signed by the secretary and at least three (3) members thereof, showing that a dangerous insect pest or plant disease exists in the state or is in dangerous proximity thereto, the Governor shall issue a proclamation specifying the insect pest or plant disease. The proclamation shall declare such a pest or disease to be a dangerous insect pest or plant disease which threatens an agricultural industry. It shall specify the plants, plant products, articles, substances, and places capable of harboring or spreading the dangerous insect pest or plant disease and shall declare the zones or areas in which the danger exists.

(b) Until such time as the Governor shall ascertain from the board, as provided above, and shall by proclamation declare that the emergency has ceased to exist, it shall be unlawful for any person to grow or maintain within those zones or areas any plants, plant products, articles, substances, or places infected or infested with a dangerous plant disease or insect pest or likely to become so infested or infected.

(c) Plants, plant products, articles, substances, or places may be grown or maintained in the manner and method and under the conditions which shall be prescribed by rules and regulations made and promulgated by the board as provided in this subchapter.

History. Acts 1921, No. 519, § 4; Pope's Dig., § 12360; A.S.A. 1947, § 77-120.

2-16-308. Infested zones — Regulation by State Plant Board — Destruction of plants, etc.

(a) It shall be the duty of the State Plant Board, and the board is authorized and directed, when public safety will permit, to make and promulgate rules and regulations which shall permit and govern the growing and maintenance in any zones or areas mentioned in § 2-16-307 of any plants, plant products, articles, substances, or places referred to in § 2-16-307.

(b) Whenever it shall be ascertained and determined by the board that any plants, plant products, articles, substances, or places are infested or infected or are so situated as to be subject to infestation or infection by a dangerous insect pest or plant disease, and thereby capable of spreading the infestation or infection, the board shall require the treatment, cutting, or destruction of the plants, plant products, articles, substances, or places.

(c) If the owner, custodian, or occupant of the plants, plant products, articles, substances, or places referred to in this section cannot be found or shall, upon reasonable notice, fail or refuse to comply with the requirements of this subchapter, the requirements shall be carried out by the board and the expense thereof charged against the owner, custodian, or occupant.

History. Acts 1921, No. 519, § 5; Pope's Dig., § 12361; A.S.A. 1947, § 77-121.

2-16-309. Claims committee.

(a) Whenever property shall be damaged, destroyed, or rendered unproductive in carrying out the provisions of this subchapter, the Governor shall appoint a committee on claims for each county affected.

(b) The committee shall consist of two (2) representatives of the county affected, and three (3) members of the State Plant Board, as follows:

- (1) The practical cotton grower;
- (2) The nurseryman; and
- (3) The practical horticulturist.

(c) The members of the committee shall serve as long as the Governor shall deem their services to be necessary.

(d)(1) The committee shall elect a chairperson.

(2) A majority of the members shall constitute a quorum for the transaction of business, but there shall be present at every meeting at least one (1) of the members appointed by the Governor to represent the county concerned and not less than two (2) members of the board composing the committee.

(e) The members of the committee shall serve without compensation, but may receive expense reimbursement in accordance with § 25-16-901 et seq.

(f) The committee shall engage such clerical and other help as may be necessary.

(g) The committee shall investigate and cause a survey to be made to determine the claims of all persons whose property has been destroyed, damaged, or rendered unproductive in carrying out the provisions of this subchapter.

(h) The committee shall submit each claim approved by it to the secretary of the board, who shall then issue for each claim a voucher for a warrant drawing on the State Treasury out of funds made available for the purpose, to the amount of the claims approved by the committee.

History. Acts 1921, No. 519, § 6; Pope's A.S.A. 1947, § 77-122; Acts 1997, No. 250, Dig., § 12362; Acts 1985, No. 385, § 1; § 3.

2-16-310. Annual report.

The State Plant Board shall make an annual report to the Governor, in which report it shall give an account of the disposition of the appropriations which may be made for the purposes of carrying out the provisions of this subchapter.

History. Acts 1921, No. 519, § 11; Pope's Dig., § 12367; A.S.A. 1947, § 77-127.

SUBCHAPTER 4 — PESTICIDE CONTROL

SECTION.

- 2-16-401. Title.
- 2-16-402. Purpose.
- 2-16-403. Definitions.
- 2-16-404. Penalties.
- 2-16-405. Administration.
- 2-16-406. Powers of State Plant Board.
- 2-16-407. Pesticide registration required.
- 2-16-408. Registration of pesticides for local needs.
- 2-16-409. Experimental-use permits.
- 2-16-410. Misbranded pesticides.
- 2-16-411. Unlawful actions — Exceptions.

SECTION.

- 2-16-412. Enforcement.
- 2-16-413. Issuance of stop-sale, etc., order.
- 2-16-414. Hearing on stop-sale, etc., order.
- 2-16-415. Subpoenas.
- 2-16-416. Intergovernmental cooperation.
- 2-16-417. Publication of information.
- 2-16-418. Protection of trade secrets and other information.
- 2-16-419. Disposition of funds.

Publisher's Notes. Acts 1975, No. 410, § 23, provided that the enactment of this subchapter would not have the effect of terminating or in any way modifying any

liability, civil or criminal, that was already in existence on the date this subchapter became effective.

Cross References. Pest Control Law,

§ 17-37-101 et seq.

Pesticide Use and Application Act, § 20-20-201 et seq.

Effective Dates. Acts 1975, No. 410, § 25: effective upon becoming law for purpose of adoption of rules and regulations; effective Jan. 1, 1976, for other purposes.

Acts 1993, No. 783, § 13: Mar. 29, 1993. Emergency clause provided: "It is hereby found and determined by the Seventy-Ninth General Assembly meeting in Regu-

lar Session that the provisions of this act are of critical importance to the state's ability to continue the duties, responsibilities, and functions of the State Plant Board. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

RESEARCH REFERENCES

A.L.R. Products liability for fertilizers, insecticides, pesticides, fungicides, weed killers, or articles used in application thereof. 12 A.L.R.4th 462.

Am. Jur. 61A Am. Jur. 2d, Poll. Cont., § 293 et seq.

C.J.S. 3 C.J.S., Agri., § 95 et seq.

2-16-401. Title.

This subchapter shall be known as the "Arkansas Pesticide Control Act".

History. Acts 1975, No. 410, § 1; A.S.A. 1947, § 77-227.

2-16-402. Purpose.

(a) The purpose of this subchapter is to regulate in the public interest the labeling, distribution, storage, transportation, and disposal of pesticides as defined in this subchapter.

(b) Pesticides are valuable to our state's agricultural production and to the protection of man and the environment from insects, rodents, weeds, and other forms of life which may be pests; but it is essential to the public health and welfare that they be regulated to prevent adverse effects on human life and the environment.

(c) New pesticides are continually being discovered, synthesized, or developed which are valuable for the control of pests and for use as defoliants, desiccants, plant regulators, spray adjuvants, and related purposes. However, such pesticides may be ineffective, may cause injury to man, or may cause unreasonable adverse effects on the environment.

(d) Therefore, it is deemed necessary to provide for regulation of pesticides.

History. Acts 1975, No. 410, § 3; A.S.A. 1947, § 77-229.

2-16-403. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Active ingredient" means any ingredient which will prevent, destroy, repel, control, or mitigate pests or which will act as a plant regulator, defoliant, desiccant, or spray adjuvant;

(2) "Adulterated" shall apply to any pesticide if its strength or purity falls below the professed standard or quality as expressed on its labeling or under which it is sold, if any substance has been substituted wholly or in part for the pesticide, or if any valuable constituent of the pesticide has been wholly or in part abstracted;

(3) "Animal" means all vertebrate and invertebrate species, including, but not limited to, man and other mammals, birds, fish, and shellfish;

(4) "Beneficial insects" means those insects which during their life cycle are effective pollinators of plants, are parasites or predators of pests, or are otherwise beneficial;

(5) "Defoliant" means any substance or mixture of substances intended for causing the leaves or foliage to drop from a plant, with or without causing abscission;

(6) "Desiccant" means any substance or mixture of substances intended for artificially accelerating the drying of plant tissue;

(7) "Device" means any instrument or contrivance, other than a firearm, which is intended for trapping, destroying, repelling, or mitigating any pest or any other form of plant or animal life, other than man, and other than bacteria, virus, or other microorganism on or in living man or other living animals; but not including equipment used for the application of pesticides when sold separately from the sale of pesticides;

(8) "Distribute" means to offer for sale, hold for sale, sell, barter, ship, deliver for shipment, or receive and having so received, deliver or offer to deliver, pesticides in this state;

(9) "Environment" includes water, air, land, and all plants and man and other animals living therein, and the interrelationships which exist among these;

(10) "EPA" means the United States Environmental Protection Agency;

(11) "FIFRA" means the Federal Insecticide, Fungicide, and Rodenticide Act, as amended;

(12) "Fungus" means any non-chlorophyll-bearing thallophytes, that is, all non-chlorophyll-bearing plants of a lower order than mosses and liverworts, for example, rusts, smuts, mildews, molds, yeasts, and bacteria, except those on or in living man or other living animals, and except those in or on processed food, beverages, or pharmaceuticals;

(13) "Highly toxic pesticide" means any pesticide determined to be a highly toxic pesticide under the authority of Section 25(c)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act or by the State Plant Board under § 2-16-406(a)(2);

(14) "Imminent hazard" means a situation which exists when the continued use of a pesticide during the time required for cancellation proceedings pursuant to § 2-16-408 would likely result in unreasonable adverse effects on the environment or will involve unreasonable hazard to the survival of a species declared endangered by the Secretary of the Interior under P.L. 91-135;

(15) "Inert ingredient" means an ingredient which is not an active ingredient;

(16) "Ingredient statement" means:

(A) Statement of the name and percentage of each active ingredient together with the total percentage of the inert ingredients in the pesticide; and

(B) When the pesticide contains arsenic in any form, the ingredient statement shall also include percentages of total and water-soluble arsenic, each calculated as elemental arsenic. In the case of a spray adjuvant, the ingredient statement need contain only the names of the functioning agents and the total percentage of the constituents ineffective as spray adjuvants;

(17) "Insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class insecta, comprising six-legged, usually winged forms, for example, beetles, bugs, bees, flies, and other allied classes of arthropods whose members are wingless and usually have more than six (6) legs, for example, spiders, mites, ticks, centipedes, and wood lice;

(18) "Label" means the written, printed, or graphic matter on or attached to the pesticide or device or any of its containers or wrappers;

(19) "Labeling" means the label and all other written, printed, or graphic matter:

(A) Accompanying the pesticide or device at any time; or

(B) To which reference is made on the label or in literature accompanying the pesticide or device, except to current official publications of the United States Environmental Protection Agency; the United States Departments of Agriculture, Interior, and Health and Human Services; state experiment stations; state agricultural colleges; and other similar federal or state institutions or agencies authorized by law to conduct research in the field of pesticides;

(20) "Nematode" means invertebrate animals of the phylum nemathelminthes and class nematoda, that is, unsegmented round worms with elongated, fusiform, or sac-like bodies covered with cuticle and inhabiting soil, water, plants, or plant parts; they may also be called nemas or eelworms;

(21) "Person" means any individual, partnership, association, fiduciary, corporation, or any organized group of persons whether incorporated or not;

(22) "Pest" means:

(A) Any insect, rodent, nematode, fungus, weed; or

(B) Any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other microorganism except viruses, bacteria, or

other microorganisms on or in living man or other living animals which the United States Environmental Protection Agency declares to be a pest under Section 25(c)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act, or which the State Plant Board declares to be a pest under § 2-16-406(a)(1);

(23) "Pesticide" means:

(A) Any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pests;

(B) Any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant; and

(C) Any substance or mixture of substances intended to be used as a spray adjuvant;

(24) "Plant regulator" means any substance or mixture of substances, intended through physiological action, for accelerating or retarding the rate of growth or rate of maturation or for otherwise altering the behavior of plants or the produce thereof. The term shall not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments;

(25) "Protect health and environment" means protection against any unreasonable adverse effects on the environment;

(26) "Registrant" means a person who has registered any pesticide pursuant to the provisions of this subchapter;

(27) "Restricted-use pesticide" means any pesticide or pesticide use classified for restricted use by the Administrator of the United States Environmental Protection Agency;

(28) "State-restricted pesticide" means any pesticide or pesticide use which, when used as directed or in accordance with a widespread and commonly recognized practice, the State Plant Board determines, subsequent to a hearing, requires additional restrictions for that pesticide or use to prevent unreasonable adverse effects on the environment, including man, lands, beneficial insects, animals, crops, and wildlife, other than pests;

(29) "Spray adjuvant" means any wetting agent, spreading agent, sticker, deposit builder, adhesive, emulsifying agent, deflocculating agent, water modifier, or similar agent intended to be used with any other pesticide as an aid to the application or to the effect thereof, and which is in a package or container separate from that of the pesticide with which it is to be used;

(30) "Unreasonable adverse effects on the environment" means any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide;

(31) "Weed" means any plant which grows where not wanted; and

(32) "Wildlife" means all living things that are neither human, domesticated, nor, as defined in this subchapter, pests. "Wildlife" shall include, but not be limited to, mammals, birds, and aquatic life.

History. Acts 1975, No. 410, § 4; A.S.A. 1947, § 77-230.

U.S. Code. The Federal Insecticide, Fungicide, and Rodenticide Act, referred to in this section is codified as 7 U.S.C. § 136 et seq. The relevant provisions of P.L. 91-135 referred to in this section were

codified as 16 U.S.C. §§ 688cc1 — 688cc6 and were repealed effective December 28, 1973. Provisions covering endangered species are generally codified as 16 U.S.C. § 1531 et seq. (Endangered Species Act of 1973.)

2-16-404. Penalties.

(a) Any person who violates any provision of this subchapter or a regulation adopted under this subchapter shall be guilty of a violation and upon conviction shall be punished for the first offense by a fine of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) and for the second and any additional offense a fine of not less than five hundred dollars (\$500) nor more than two thousand dollars (\$2,000).

(b) Any offense committed more than three (3) years after a previous conviction shall be considered as a first offense.

History. Acts 1975, No. 410, § 18; A.S.A. 1947, § 77-244; Acts 2005, No. 1994, § 8.

Amendments. The 2005 amendment, in (a), substituted “violation” for “misdemeanor” and “punished” for “punishable.”

2-16-405. Administration.

(a) This subchapter shall be administered by the State Plant Board.

(b) The functions vested in the board by this subchapter shall be considered to be delegated to the employees of the State Plant Board or its authorized representatives.

History. Acts 1975, No. 410, §§ 2, 20; A.S.A. 1947, §§ 77-228, 77-246.

2-16-406. Powers of State Plant Board.

(a) The State Plant Board is authorized, after due notice and an opportunity for a hearing, to:

(1) Declare as a pest any form of plant or animal life, other than man and other than bacteria, viruses, and other microorganisms on or in living man or other living animals, which is injurious to health or the environment;

(2) Determine whether pesticides registered under the authority of Section 24(c) of the Federal Insecticide, Fungicide, and Rodenticide Act are highly toxic to man. The definition of “highly toxic” in 40 C.F.R. § 162.8, as issued or hereafter amended, shall govern the board’s determination;

(3) Determine pesticides, and quantities of substances contained in pesticides, which are injurious to the environment. The board shall be guided by the United States Environmental Protection Agency regulations in this determination; and

(4) Prescribe regulations requiring any pesticide registered for special local needs to be colored or discolored if it determines that the requirement is feasible and is necessary for the protection of health and the environment.

(b) The board is authorized to inspect pesticides wherever found and may sample and analyze or cause to be analyzed samples thereof, to determine compliance with this subchapter and the regulations adopted hereunder.

(c) The board is authorized, after due notice and a public hearing, to make appropriate regulations where the regulations are necessary for the enforcement and administration of this subchapter. These regulations shall include, but not be limited to, regulations providing for:

(1) The safe handling, transportation, storage, display, distribution, and disposal of pesticides and their containers;

(2) Labeling requirements of all pesticides required to be registered under provisions of this subchapter. The regulations shall not impose any requirements for federally registered labels in addition to or different from those required pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act;

(3) Specifying those classes of devices which shall be subject to any provision of § 2-16-410.

(d) For the purpose of uniformity and in order to enter into cooperative agreements, the board may:

(1) Adopt restricted-use pesticides classifications as determined by the United States Environmental Protection Agency. In addition, the board may declare certain pesticides or pesticide uses as state-restricted pesticides when, after investigation and public hearing, it finds and determines the pesticide to be injurious to persons, animals, or vegetation other than the pest or vegetation which it is intended to destroy, or otherwise requires additional restrictions under the conditions set forth in § 2-16-403(28). The sale or distribution of such pesticides in Arkansas or their use in pest control or other operation is prohibited, except in accordance with such rules and regulations as may be made by the board after a public hearing. The rules and regulations may include rules and regulations prescribing the time when and the conditions under which the materials may be used in different areas in the state. The board, in its rules and regulations, may charge inspection and permit fees sufficient to cover the cost of enforcement of this subdivision (d)(1); and

(2) Adopt regulations in conformity with the primary pesticide standards, particularly as to labeling and registration requirements, as established by the United States Environmental Protection Agency or other federal or state agencies.

History. Acts 1975, No. 410, § 9; A.S.A. Fungicide, and Rodenticide Act, see § 2-16-403.
1947, § 77-235.

U.S. Code. For the Federal Insecticide,

2-16-407. Pesticide registration required.

(a) Each pesticide must have been accepted for registration by the State Plant Board, and the registration must be in force at the time it is sold, offered for sale, or distributed in this state. Registration is not required if a pesticide is shipped from one (1) plant or warehouse to another plant or warehouse operated by the same person and used solely at the plant or warehouse as a constituent part to make a pesticide which is registered under the provisions of this subchapter or if the pesticide is distributed under the provisions of an experimental use permit issued under § 2-16-409 or an experimental use permit issued by the United States Environmental Protection Agency.

(b) The applicant for registration shall file a statement with the board which shall include:

(1) The name and address of the applicant and the name and address of the person whose name will appear on the label, if other than the applicant's;

(2) The name of the pesticide;

(3) Other necessary information required for completion of the board's application for registration form; and

(4) A complete copy of the labeling accompanying the pesticide and a statement of all claims to be made for it, including the directions for use and the use classification as provided in the Federal Insecticide, Fungicide, and Rodenticide Act.

(c) The board, when it deems it necessary in the administration of this subchapter, may require the submission of the complete formula of any pesticide, including the active and inert ingredients.

(d) The board may require a full description of the tests made and the results upon which the claims are based on any pesticide not registered pursuant to § 3 of the Federal Insecticide, Fungicide, and Rodenticide Act or on any pesticide on which restrictions are being considered. In the case of renewal of registration, a statement shall be required only with respect to information which is different from that furnished when the pesticide was registered or last reregistered.

(e) The board may prescribe other necessary information by regulation.

(f) The applicant desiring to register a pesticide shall pay an annual registration fee as prescribed in the regulations of the board for each pesticide registered by the applicant. The annual registration fee shall be no less than sixty dollars (\$60.00) for each product registered. All registrations shall expire December 31 each year.

(g) Any registration approved by the board and in effect on December 31 for which a renewal application has been made and the proper fee paid shall continue in full force and effect until such time as the board notifies the applicant that the registration has been approved or denied, in accordance with the provisions of § 2-16-408. Forms for reregistration shall be mailed to registrants at least thirty (30) days prior to the due date.

(h) Provided the board is certified by the Administrator of the United States Environmental Protection Agency to register pesticides to meet special local needs pursuant to Section 24(c) of the Federal Insecticide, Fungicide, and Rodenticide Act, the board shall require information set forth under subsections (b) - (e) of this section and shall register a pesticide if it determines that:

(1) The pesticide's composition is such as to warrant the proposed claims for it;

(2) The pesticide's labeling and other material required to be submitted comply with the requirements of this subchapter;

(3) The pesticide will perform its intended function without unreasonable adverse effects on the environment;

(4) When used in accordance with widespread and commonly recognized practice, the pesticide will not generally cause unreasonable adverse effects on the environment; and

(5) The classification for general or restricted use is in conformity with Section 3(d) of the Federal Insecticide, Fungicide, and Rodenticide Act.

(i) The board shall not make any lack of essentiality a criterion for denying registration of any pesticide. Where two (2) pesticides meet the requirements of this section, one (1) should not be registered in preference to the other.

History. Acts 1975, No. 410, § 6; A.S.A. Fungicide, and Rodenticide Act, see § 2-1947, § 77-232; Acts 1993, No. 783, § 7. 16-403.

U.S. Code. For Federal Insecticide,

2-16-408. Registration of pesticides for local needs.

(a) Provided the State Plant Board is certified by the Administrator of the United States Environmental Protection Agency to register pesticides for those pesticides formulated to meet special local needs, the board shall consider the following for refusal to register, for cancellation, for suspension, or for legal recourse:

(1)(A) If it does not appear to the board that the pesticide is such as to warrant the proposed claims for it or if the pesticide and its labeling and other material required to be submitted do not comply with the provisions of this subchapter or regulations adopted hereunder, it shall notify the applicant of the manner in which the pesticide, labeling, or other material required to be submitted fails to comply with the provisions of this subchapter so as to afford the applicant an opportunity to make the necessary corrections.

(B) If, upon receipt of the notice, the applicant does not make the required changes, the board may refuse to register the pesticide.

(C) The applicant may request a hearing as provided for in the Arkansas Administrative Procedure Act, § 25-15-201 et seq.;

(2) When the board determines that a pesticide or its labeling does not comply with the provisions of this subchapter or the regulations adopted hereunder, it may cancel the registration of a pesticide after a

hearing in accordance with the provisions of the Arkansas Administrative Procedure Act, § 25-15-201 et seq.;

(3) When the board determines that there is an imminent hazard, it may on its own motion suspend the registration of a pesticide in conformance with the provisions of the Arkansas Administrative Procedure Act, § 25-15-201 et seq. Hearings shall be held with the utmost possible expedition; and

(4)(A) Any person adversely affected by an order in this section may obtain judicial review of the order by filing in the circuit court, within sixty (60) days after the entry of the order, a petition praying that the order be set aside in whole or in part.

(B) A copy of the petition shall be forthwith transmitted by the clerk of the court to the board, and then the board shall file in the court the record of the proceedings on which it based its order.

(C) The court shall have jurisdiction to affirm or set aside the order complained of in whole or in part.

(D) The findings of the board with respect to questions of fact shall be sustained if supported by substantial evidence when considered on the record as a whole.

(E) Upon application, the court may remand the matter to the board to take further testimony if there are reasonable grounds for the failure to adduce such evidence in the prior hearing.

(F) The board may modify its findings and order by reason of the additional evidence so taken and shall file the additional record and any modification of the findings or order with the clerk of the court.

(b) If the board determines that any federally registered pesticide, with respect to its use in this state, requires further restrictions pursuant to § 2-16-406(d)(1), it may refuse to register or cancel or suspend the current registration of the pesticide in order to comply with such rules and regulations as may be adopted under § 2-16-406.

History. Acts 1975, No. 410, § 8; A.S.A. Fungicide, and Rodenticide Act, see § 2-1947, § 77-234. 16-403.

U.S. Code. For the Federal Insecticide,

2-16-409. Experimental-use permits.

(a) Provided the State Plant Board is authorized by the Administrator of the United States Environmental Protection Agency to issue experimental-use permits, the board may:

(1) Issue an experimental-use permit to any person applying for an experimental-use permit if it determines that the applicant needs that permit in order to accumulate information necessary to register a pesticide under § 2-16-407;

(2) Refuse to issue an experimental-use permit if it determines that the pesticide applications to be made under the proposed terms and conditions may cause unreasonable adverse effects on the environment;

(3) Prescribe terms, conditions, and a period of time for the experimental-use permit which shall be under the supervision of the board; and

(4) Revoke any experimental-use permit at any time if it finds that the permit's terms or conditions are being violated or that its terms and conditions are inadequate to avoid unreasonable adverse effects on the environment.

(b) Regulations adopted under this subchapter as to experimental-use permits as authorized by the Federal Insecticide, Fungicide, and Rodenticide Act shall not be inconsistent with the requirements of the Federal Insecticide, Fungicide, and Rodenticide Act and regulations promulgated thereunder.

History. Acts 1975, No. 410, § 7; A.S.A. Fungicide, and Rodenticide Act, see § 2-1947, § 77-233. 16-403.

U.S. Code. For the Federal Insecticide,

2-16-410. Misbranded pesticides.

A pesticide is misbranded:

(1) If its labeling bears any statement, design, or graphic representation relative to the pesticide or to its ingredients which is false or misleading in any particular;

(2) If it is an imitation of or is distributed under the name of another pesticide;

(3) If any word, statement, or other information required to appear on the label or labeling is not prominently placed thereon with such conspicuousness, compared with other words, statements, designs, or graphic matter in the labeling, and in such terms, as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(4) If the labeling does not contain a statement of the federal use classification under which the product is registered;

(5) If the labeling accompanying it does not contain directions for use which are necessary for effecting the purpose for which the product is intended, and the directions if complied with, together with any requirements imposed under section 3(3) of the Federal Insecticide, Fungicide, and Rodenticide Act, are adequate to protect health and the environment;

(6) If the label does not bear:

(A) The name, brand, or trademark under which the pesticide is distributed;

(B) An ingredient statement on that part of the immediate container and on the outside container and wrapper of the retail package, if there is one, through which the ingredient statement on the immediate container cannot be clearly read, which is presented or displayed under customary conditions of purchase. The ingredient statement may appear prominently on another part of the container as permitted pursuant to Section 2(q)(2)(A) of the Federal Insecticide,

Fungicide, and Rodenticide Act if the size or form of the container makes it impracticable to place it on the part of the retail package which is presented or displayed under customary conditions of purchase;

(C) A warning or caution statement which may be necessary and which, if complied with together with any requirements imposed under section 3(d) of the Federal Insecticide, Fungicide, and Rodenticide Act, would be adequate to protect the health and environment;

(D) The net weight or measure of the content;

(E) The name and address of the manufacturer, registrant, or person for whom manufactured; and

(F) The United States Environmental Protection Agency registration number assigned to each establishment in which it was produced and the United States Environmental Protection Agency registration number assigned to the pesticide, if required by regulations under the Federal Insecticide, Fungicide, and Rodenticide Act;

(7) If that pesticide contains any substance in quantities highly toxic to man unless the label bears, in addition to other label requirements:

(A) The skull and crossbones;

(B) The word "POISON" in red prominently displayed on a background of distinctly contrasting color; and

(C) A statement of a practical treatment, first aid or otherwise, to be used in case of poisoning by the pesticide;

(8) If the pesticide container does not bear a registered label; and

(9) If a spray adjuvant label fails to state the type or function of the functioning agents.

History. Acts 1975, No. 410, § 5; A.S.A. Fungicide, and Rodenticide Act, see § 2-1947, § 77-231. 16-403.

U.S. Code. For the Federal Insecticide,

2-16-411. Unlawful actions — Exceptions.

(a)(1) It is unlawful for any person to distribute in this state any of the following:

(A) Any pesticide which has not been registered pursuant to:

(i) The provisions of this subchapter; or

(ii) The provisions of the Federal Insecticide, Fungicide, and Rodenticide Act;

(B) Any pesticide if any of the claims made for it or any of the directions for its use or other labeling differs from the representations made in connection with its registration, or if the composition of a pesticide differs from its composition as represented in connection with its registration. A change in the labeling or formulation of a pesticide may be made within a registration period without requiring reregistration of the product if the registration is amended to reflect the change and if the change will not violate any provision of the Federal Insecticide, Fungicide, and Rodenticide Act or this subchapter;

(C) Any pesticide unless it is in the registrant's or the manufacturer's unbroken immediate container and there is affixed to the container, and to the outside container or wrapper of the retail package if there is one through which the required information on the immediate container cannot be clearly read, a label bearing the information required in this subchapter and the regulations adopted under this subchapter. The State Plant Board may designate that certain specified economic poisons may be sold by the manufacturers or dealers in bulk, in which case the label information required and any other statements required by this subchapter must be stated in or attached to the invoice. In addition, a copy of the invoice must be given to the purchaser at the time the economic poison is delivered;

(D) Any pesticide which has not been colored or discolored pursuant to the provisions of § 2-16-406(a)(4) or of Section 25(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act;

(E) Any pesticide which is adulterated or misbranded or any device which is misbranded; and

(F) Any pesticide in containers which are unsafe due to damage.

(2) However, this subsection shall not apply to:

(A) Any carrier while lawfully engaged in transporting a pesticide within this state if the carrier shall, upon request, permit the board to copy all records showing the transactions in and movement of the pesticides or devices;

(B) Public officials of this state and the federal government while engaged in the performance of their official duties in administering state or federal pesticide laws or regulations or while engaged in pesticide research;

(C) The manufacturer or shipper of a pesticide for experimental use only by or under the supervision of an agency of this state or of the federal government authorized by law to conduct research in the field of pesticides if the manufacturer or shipper holds a valid experimental-use permit as provided for by § 2-16-409 or by the United States Environmental Protection Agency;

(D) Any person who ships a substance or mixture of substances being put through tests, in which the purpose is only to determine its value for pesticide purposes or to determine its toxicity or other properties, from which the user does not expect to receive any benefit in pest control from its use.

(b) It shall be unlawful for any person to:

(1) Detach, alter, deface, or destroy, wholly or in part, any label or labeling provided for in this subchapter or in regulations adopted under this subchapter or to add any substance to or take any substance from a pesticide in a manner that may defeat the purpose of this subchapter or the regulations adopted hereunder;

(2) Use for his or her own advantage or to reveal, other than to the board, to properly designated state or federal officials, to employees of the state or federal executive agencies, to the courts of the state in response to a subpoena, to physicians, or in emergencies to pharmacists

and other qualified persons for use in the preparation of antidotes, any information relative to formulas of products acquired by authority of § 2-16-407 or any information judged by the board as containing or relating to trade secrets or commercial or financial information obtained by authority of this subchapter and marked as privileged or confidential by the registrant;

(3) Handle, transport, store, display, or distribute pesticides in such a manner as to endanger man and his or her environment or to endanger food, feed, or any other products that may be transported, stored, displayed, or distributed with the pesticides;

(4) Dispose of, discard, or store any pesticides or pesticide containers in such a manner as to cause injury to humans, vegetation, crops, livestock, wildlife, or beneficial insects or to pollute any water supply or waterway;

(5) Refuse or otherwise fail to comply with the provisions of this subchapter, the regulations adopted hereunder, or any lawful order of the board.

(c) No person shall transport, store, or dispose of any pesticide or pesticide containers in such a manner as to cause injury to humans, vegetation, crops, livestock, wildlife, or beneficial insects or to pollute any waterway in a way harmful to any wildlife therein. The board may promulgate rules and regulations governing the storing and disposal of pesticides or pesticide containers. In determining these standards, the board shall take into consideration any regulations issued by the United States Environmental Protection Agency.

(d) No pesticide or device shall be deemed in violation of this subchapter when intended solely for export to a foreign country, and when prepared or packed according to the specification or directions of the purchaser. If not so exported, all the provisions of this subchapter shall apply.

History. Acts 1975, No. 410, §§ 10, 11; Fungicide, and Rodenticide Act, see § 2-16-403.
A.S.A. 1947, §§ 77-236, 77-237.

U.S. Code. For the Federal Insecticide,

2-16-412. Enforcement.

(a)(1) The sampling and examination of pesticides or devices shall be made by the State Plant Board for the purpose of determining whether they comply with the requirements of this subchapter.

(2) The board is authorized to enter any distributor's premises, including any vehicle of transport, at all reasonable times in order to have access to pesticides or devices packaged or labeled for distribution and to collect samples of the contents, containers, or labeling for the pesticides or devices.

(3) If an analysis is made of the samples, a copy of the results of the analysis shall be furnished promptly to the owner, operator, or agent in charge.

(4) If it appears from the examination that a pesticide or device fails to comply with the provisions of this subchapter or regulations adopted hereunder and the board contemplates instituting criminal proceedings against any person, the board shall cause appropriate notice to be given to that person.

(5) Any person so notified shall be given an opportunity within a reasonable time to present his or her views, either orally or in writing, with regard to the contemplated proceedings.

(6) If thereafter, in the opinion of the board, it appears that the provisions of this subchapter or regulations adopted hereunder have been violated by the person, the board shall refer a copy of the results of the analysis or the examination of the pesticide or device to the prosecuting attorney for the county in which the violation occurred.

(b)(1) For the purpose of carrying out the provisions of this subchapter, the board may enter upon any public or private premises at reasonable times in order to inspect storage or disposal areas or sample pesticides being applied or to be applied.

(2) Should the board be denied access to any premises or other areas where access was sought for the purposes set forth in this subchapter, it may apply to any court of competent jurisdiction for a search warrant authorizing access to those premises or other areas for the purposes set forth in this subchapter. The court may, upon such application, issue the search warrant for the purposes requested.

(c) The board, with or without the aid and advice of the prosecuting attorney, is charged with the duty of enforcing the requirements of this subchapter and any rules or regulations issued thereunder. In the event a prosecuting attorney refuses to act on behalf of the board, the Attorney General may so act.

(d) The board is authorized to apply to any court of competent jurisdiction for, and the court upon hearing and for cause shown may grant, a temporary or permanent injunction. This injunction shall restrain any person from violating any provisions of this subchapter or of the rules and regulations made under authority of this subchapter and shall be without bond.

(e) Nothing in this subchapter shall be construed as requiring the board to report minor violations of this subchapter for prosecution or for the institution of condemnation proceedings when it believes that the public interest will be served best by a suitable notice of warning in writing.

History. Acts 1975, No. 410, § 12;
A.S.A. 1947, § 77-238.

2-16-413. Issuance of stop-sale, etc., order.

(a) When the State Plant Board has reasonable cause to believe a pesticide or device is being distributed, stored, transported, or used in violation of any of the provisions of this subchapter, or of any of the regulations prescribed under the authority of this subchapter, it may

issue and serve a written stop-sale, use, or removal order upon the owner or custodian of the pesticide or device.

(b) If the owner or custodian is not available for service of the order upon him or her, the board may attach the order or other suitable marking to the pesticide or device and notify the owner or custodian and the registrant.

(c) The pesticide or device shall not be sold, used, or removed until the provisions of this subchapter have been complied with and until the pesticide or device has been released in writing under conditions specified by the board or the violation has been otherwise disposed of as provided in this subchapter by a court of competent jurisdiction.

History. Acts 1975, No. 410, § 13;
A.S.A. 1947, § 77-239.

2-16-414. Hearing on stop-sale, etc., order.

(a)(1) After service of a stop-sale, use, or removal order is made upon any person, either that person, the registrant, or the State Plant Board may file an action in a court of competent jurisdiction in the county in which a violation of this subchapter or regulations adopted hereunder is alleged to have occurred for an adjudication of the alleged violation.

(2) The court in the action may issue temporary or permanent injunctions, mandatory or restraining orders, and such intermediate orders as it deems necessary or advisable.

(3) The court may order condemnation of any pesticide or device which does not meet the requirements of this subchapter or regulations adopted hereunder.

(b)(1) If the pesticide or device is condemned, it shall, after entry of decree, be disposed of by destruction or sale as the court directs.

(2) If the pesticide or device is sold, the proceeds, less costs including legal costs, shall be paid to the State Treasury as provided in § 2-16-419.

(3) The pesticide or device shall not be sold contrary to the provisions of this subchapter or regulations adopted hereunder.

(4) Upon payment of costs and execution and delivery of a good and sufficient bond conditioned that the pesticide or device shall not be disposed of unlawfully, the court may direct that the pesticide or device be delivered to its owner for relabeling, reprocessing, removing from the state, or otherwise bringing the product into compliance.

(c) When a decree of condemnation is entered against the pesticide or device, court costs, fees, storage, and other proper expenses shall be awarded against the person, if any, appearing as claimant of the pesticide.

(d) No state court shall allow the recovery of damages from administrative action taken or for stop-sale, use, or removal if the court finds that there was probable cause for such action.

History. Acts 1975, No. 410, §§ 14, 18;
A.S.A. 1947, §§ 77-240, 77-244.

2-16-415. Subpoenas.

The State Plant Board may issue subpoenas to compel the attendance of witnesses or production of books, documents, and records in the state in any hearing affecting the authority or privilege granted by a registration issued under the provisions of this subchapter.

History. Acts 1975, No. 410, § 17;
A.S.A. 1947, § 77-243.

2-16-416. Intergovernmental cooperation.

The State Plant Board may cooperate, receive grants-in-aid, and enter into cooperative agreements or contracts with any agency of the federal government or this state or its subdivisions or with any agency of another state, in order to:

(1) Secure uniformity of regulations;

(2) Enter into cooperative agreements with the United States Environmental Protection Agency to register pesticides under the authority of this subchapter and the Federal Insecticide, Fungicide, and Rodenticide Act; and

(3) Cooperate in the enforcement of the federal pesticide control laws through the use of state or federal personnel and facilities and implement cooperative enforcement programs, including, but not limited to, the registration and inspection of establishments.

History. Acts 1975, No. 410, § 15; Fungicide, and Rodenticide Act, see § 2-16-403.
A.S.A. 1947, § 77-241.

U.S. Code. For the Federal Insecticide,

2-16-417. Publication of information.

The State Plant Board may publish, in such form as it may deem proper, results of analyses based on official samples as compared with the analyses guaranteed and information concerning the distribution of pesticides.

History. Acts 1975, No. 410, § 16;
A.S.A. 1947, § 77-242.

2-16-418. Protection of trade secrets and other information.

(a) In submitting data required by this subchapter, the applicant may:

(1) Clearly mark any portions thereof which in his or her opinion are trade secrets or commercial or financial information; and

(2) Submit such marked material separately from other material required to be submitted under this subchapter.

(b) Notwithstanding any other provision of this subchapter, the State Plant Board shall not make public any information which, in its judgment, contains or relates to trade secrets or commercial or financial information obtained from a person and is privileged or confidential, except that, when necessary to carry out the provisions of this subchapter, information relating to formulas of products acquired by authorization of this subchapter may be revealed to any state or federal agency consulted or in findings of fact issued by the board.

(c)(1) If the board proposes to release for inspection information which the applicant or registrant believes to be protected from disclosure under subsection (b) of this section, it shall notify the applicant or registrant, in writing, by certified mail.

(2) The board shall not, after mailing the notice as provided in this subsection, make available for inspection the data until thirty (30) days after receipt of the notice by the applicant or registrant.

(3) During this period, the applicant or registrant may institute an action in an appropriate court for a declaratory judgment as to whether the information is subject to protection under subsection (b) of this section.

History. Acts 1975, No. 410, § 19;
A.S.A. 1947, § 77-245.

2-16-419. Disposition of funds.

All moneys received by the State Plant Board under the provisions of this subchapter and the regulations adopted hereunder shall be deposited in the State Plant Board Fund of the State Treasury and be used for carrying out the provisions of this subchapter.

History. Acts 1975, No. 410, § 21;
A.S.A. 1947, § 77-247.

SUBCHAPTER 5 — JOHNSON GRASS CONTROL AND ERADICATION

SECTION.

2-16-501. Title.

2-16-502. Applicability.

2-16-503. Penalty.

2-16-504. Petition to establish district.

2-16-505. Establishment of district.

2-16-506. Powers and duties of district supervisors.

SECTION.

2-16-507. State assistance.

2-16-508. Civil remedies.

2-16-509. Duties of landowners.

2-16-510. Acceptance of gifts, etc.

2-16-511. Abolition of district.

Effective Dates. Acts 1967, No. 186, § 14; Feb. 28, 1967. Emergency clause provided: "It is hereby found and determined by the General Assembly that many counties in this state are plagued with an acute and rapidly progressing

Johnson Grass problem; that the land upon which such grass grows decreases in value and fails to produce an adequate yield of crops, thereby affecting the economy of this state; that there is no existing program to combat this problem

in these counties; and that in order to control and eradicate Johnson Grass and to insure record yields of crops on all lands in this state, it is necessary that this act become effective immediately. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1975, No. 287, § 12; Mar. 3, 1975. Emergency clause provided: "It is hereby found and determined by the General Assembly that the Johnson Grass Control and Eradication Law of this state is in

urgent need of clarification and modification to enable the various areas of the state to take advantage of its provisions to alleviate the problem of Johnson Grass in the state, and that this act is designed to so clarify and modify said laws and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Cross References. State Plant Board Operations and Facilities Construction Fund, § 2-16-108.

2-16-501. Title.

This subchapter shall be known as the "Johnson Grass Control and Eradication Act".

History. Acts 1967, No. 186, § 1; 1975, No. 287, § 1; A.S.A. 1947, § 77-1701.

2-16-502. Applicability.

The provisions of this subchapter shall be applicable to and shall be enforced only in those areas of this state established as Johnson grass control and eradication districts in the manner authorized herein. For the purposes of this subchapter, a district may consist of one (1) or more contiguous townships in one (1) or more contiguous counties, but in no event shall a single district lie in more than three (3) counties.

History. Acts 1967, No. 186, § 2; 1975, No. 287, § 2; A.S.A. 1947, § 77-1702.

2-16-503. Penalty.

(a) Any landowner or any person having control of any land in a Johnson grass control and eradication district who fails or refuses to control or eradicate Johnson grass on his or her lands shall be guilty of a violation.

(b)(1) Upon conviction, an offender shall be subject to a fine of not less than fifty dollars (\$50.00) nor more than one hundred dollars (\$100) for each violation.

(2) Each day a violation shall exist or continue shall constitute a separate offense.

History. Acts 1967, No. 186, § 8; 1975, No. 287, § 8; A.S.A. 1947, § 77-1708; Acts 2005, No. 1994, § 9.

Amendments. The 2005 amendment substituted "violation" for "misdemeanor" in (a).

2-16-504. Petition to establish district.

(a)(1) Upon the petition of fifty (50) landowners filed with the county court or courts in which a proposed district lies, the county court or courts shall declare that a threat to the agricultural economy of the proposed district exists by reason of the uncontrolled growth of Johnson grass.

(2) The county court or courts shall cause the question of whether the district shall be established and this subchapter shall be enforced in the district to be submitted to the landowners of the proposed district.

(b)(1) Immediately upon the submission of the petition to the county court or courts, the court or courts shall issue a proclamation calling the election in accordance with § 7-5-103(b) and notify the county board or boards of election commissioners in writing. The election shall be held on a date in accordance with § 7-5-103(b) but in no event more than ninety (90) days following publication of the proclamation.

(2) This special election shall be held for the purpose of submitting to the landowners of the proposed district the question of whether the district shall be established and the provisions of this subchapter shall be enforced in the district.

History. Acts 1967, No. 186, § 3; 1975, No. 287, § 3; A.S.A. 1947, § 77-1703; Acts 2005, No. 2145, § 1; 2007, No. 1049, § 1.	(b)(1)(A) and (B); substituted “thirty (30)” for “forty-five (45)” in (b)(1)(A); and added (b)(2).
Amendments. The 2005 amendment redesignated former (b) as present	The 2007 amendment rewrote (b).

2-16-505. Establishment of district.

(a) When the question as to whether this subchapter shall be enforced in any district is submitted to the landowners of the district at any special election called for that purpose, the question shall be submitted to the landowners in substantially the following form on the ballot:

FOR THE ESTABLISHMENT OF A JOHNSON GRASS CONTROL AND ERADICATION DISTRICT COMPOSED OF ☐
AGAINST THE ESTABLISHMENT OF A JOHNSON GRASS CONTROL AND ERADICATION DISTRICT COMPOSED OF ☐

(b)(1) Only qualified electors of the proposed district who are owners of real property in the proposed district shall be permitted to vote in the election.

(2) Every person voting in the election shall be required to sign an affidavit that the person is an owner of real property in the proposed district.

(c)(1) If in any special election a majority of the landowners voting on the question shall vote against the establishment of the district, the question shall not again be submitted to the landowners of the district for one (1) year.

(2)(A) If at the special election the majority of the landowners voting on the question shall vote for the establishment of the district, then

the vote shall be entered on the record, and the county clerk or clerks shall notify the judge or judges who shall declare the designated area to be a Johnson grass control and eradication district and shall cause notice to be published in a newspaper having a general circulation in the electing district.

(B) The notice shall state that the district has been established, that the provisions of this subchapter shall be applicable in the district, and that all landowners in the district shall take steps to control and eradicate Johnson grass on all lands owned by them or under their control, in accordance with this subchapter.

(3)(A) Within ten (10) days after the publication of the notice, the county judge or judges in which a district lies shall appoint a district Johnson grass control board composed of three (3) landowners in the district to advise and assist in the administration of this subchapter in that district.

(B)(i) If the district is in a single county, the county judge of that county shall appoint the three (3) members of the board.

(ii) If a district lies within two (2) counties, the county judge in which the greater acreage of the district lies shall appoint two (2) members of the board, and the county judge of the other county in which a portion of the district lies shall appoint one (1) member.

(iii) In the event a district lies within three (3) counties, the county judge of each county in which a portion of the district lies shall appoint one (1) member to the board.

(4)(A) The district Johnson grass control board shall select and employ a district Johnson grass control and eradication supervisor, who shall be a resident of the district and who shall have a thorough knowledge of ways and means of controlling and eradicating Johnson grass.

(B) The supervisor, through the direction of the board, shall be charged with the administration and enforcement of this subchapter in the district.

(C)(i) The supervisor shall be a full-time employee of the district and shall receive such salary and other compensation and expenses as shall be determined by the board.

(ii) The county court in each county in which a portion of a district lies shall provide from the county general fund, on a basis proportional to the amount of district acreage in the county to the total acreage in the district, such funds as shall be sufficient to pay the salary of the supervisor and to otherwise carry out the purposes of this subchapter in the district.

History. Acts 1967, No. 186, § 4; 1975, No. 287, § 4; A.S.A. 1947, § 77-1704.

2-16-506. Powers and duties of district supervisors.

(a) The district Johnson grass control and eradication supervisor of each district shall have and exercise the following powers and duties, among others, regarding the Johnson grass eradication program:

- (1) To supervise the eradication of Johnson grass;
- (2) To inspect property in the district to determine whether this subchapter is being complied with by those owning or having control of such lands;
- (3) To inform himself or herself of the nature of Johnson grass and to follow the recommendations of the Director of the State Plant Board and the University of Arkansas College of Agriculture as to the best methods of controlling, eradicating, and preventing the dissemination of Johnson grass; and

(4) Through the director, to enter into agreements with the state and federal agencies for the cooperative control of Johnson grass.

(b) The supervisor shall periodically inspect all lands in the district. Annually and at such other times as may be required by the district board the supervisor shall make a complete report to the district board and the director of the progress being made in the district in the control and eradication of Johnson grass.

History. Acts 1967, No. 186, § 6; 1975, No. 287, § 6; A.S.A. 1947, § 77-1706.

2-16-507. State assistance.

The Director of the State Plant Board is authorized to cooperate with and assist the district Johnson grass control board and the supervisor in the control and eradication of Johnson grass in the district when requested to do so by the board or the supervisor.

History. Acts 1967, No. 186, § 7; 1975, No. 287, § 7; A.S.A. 1947, § 77-1707.

2-16-508. Civil remedies.

(a) Notwithstanding the criminal penalty for the violation of this subchapter, the existence or growth of Johnson grass in a Johnson grass control and eradication district is declared to be a public and common nuisance, and it is the duty of the prosecuting attorney in whose district the offense occurs to bring an action to enjoin the nuisance.

(b) Any landowner whose land is adjacent to or within one hundred feet (100') of land on which the Johnson grass nuisance is permitted or maintained may bring a civil action for injunction against any person permitting or maintaining the nuisance and shall, in addition to injunctive relief, be entitled to recover double the actual damages sustained as a result of the nuisance as well as a reasonable attorney's fee and cost of bringing the action.

History. Acts 1967, No. 186, § 10; 1975, No. 287, § 10; A.S.A. 1947, § 77-1710.

2-16-509. Duties of landowners.

It shall be the duty of the State of Arkansas or any department thereof, any public utility, railroad, levee and drainage district, county, or any municipality, and every other person, firm, corporation, or association owning or having control over any lands in a Johnson grass control and eradication district to:

(1) Control and eradicate Johnson grass on all lands, rights-of-way, and easements owned, occupied, or controlled by them;

(2) Employ methods approved by the Director of the State Plant Board for control and eradication of Johnson grass as the district board shall direct; and

(3) Comply with all orders, rules, and regulations of the district board and the director.

History. Acts 1967, No. 186, § 5; 1975, No. 287, § 5; A.S.A. 1947, § 77-1705.

2-16-510. Acceptance of gifts, etc.

The district Johnson grass control board is authorized to accept gifts, grants, and donations for use in carrying out the purpose of controlling and eradicating Johnson grass in the district.

History. Acts 1967, No. 186, § 9; 1975, No. 287, § 9; A.S.A. 1947, § 77-1709.

2-16-511. Abolition of district.

(a) Any district established pursuant to the provisions of this subchapter may be abolished upon a majority vote of the landowners of the district at a special election called for that purpose.

(b) The question of abolishing a district shall be submitted to the landowners of the district in the same manner as is provided in § 2-16-502.

History. Acts 1967, No. 186, § 11; 1975, No. 287, § 11; A.S.A. 1947, § 77-1711.

SUBCHAPTER 6 — ARKANSAS BOLL WEEVIL SUPPRESSION ERADICATION ACT

SECTION.

2-16-601. Title.

2-16-602. Declaration of policy — Purpose — Construction.

2-16-603. Definitions.

2-16-604. Criminal penalties.

2-16-605. Rules and regulations.

SECTION.

2-16-606. Cooperative programs authorized.

2-16-607. Entry of premises — Suppression or eradication activities — Inspections.

2-16-608. Reports.

SECTION.

2-16-609. Quarantine.

2-16-610. Designation of eradication zones — Prohibition of planting of cotton — Participation in suppression eradication program — Penalties.

2-16-611. Destruction or treatment of volunteer or other noncommercial cotton in eradication zones — Liability.

SECTION.

2-16-612. Certification of cotton growers' organization — Requirements.

2-16-613. Certification of cotton growers' organization — Revocation.

2-16-614. Referendum — Assessments.

2-16-615. Conduct of referendum.

2-16-616. Subsequent referenda.

2-16-617. Failure to pay assessments — Extensions — Exemption.

Effective Dates. Acts 1991, No. 710, § 22: Mar. 22, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly that the boll weevil is not only a pest but that it threatens the growth of cotton in this state and costs many thousands of dollars in damages annually; that the purpose of this act is to establish a program to control the boll weevil and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this act being necessary to the public peace, health and welfare shall be in effect from the date of its passage and approval."

Acts 1995, No. 529, § 8: Mar. 6, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that the Arkansas boll weevil suppression program has been and continues to be a valuable tool in controlling the boll weevil population in the state; that the boll weevil suppression program law is in need of minor revisions to promote and strengthen the program; that such revisions are urgently needed to assure the continued success of the program and that this act is designed to effect those revisions and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 317, § 8: Mar. 3, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 10 of the First Extraordinary Session of 1995 abolished the Joint Interim Committee on Agriculture and Economic Development and in its place

established separate House and Senate Committees; that various sections of the Arkansas Code refer to the Joint Interim Committee on Agriculture and Economic Development and should be corrected to refer to the House and Senate Interim Committees; that this act so provides; and that this act should go into effect immediately in order to make the laws compatible as soon as possible. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2003, No. 1726, § 3: Apr. 22, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the representation on the board of directors of the certified crop growers' organization should be proportional to the acreage of cotton within each eradication zone; that this act so provides; and that this act should go into effect as soon as possible in order to provide appropriate representation of the cotton growers within each zone. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the

expiration of the period of time during which the Governor may veto the bill; or
(3) If the bill is vetoed by the Governor

and the veto is overridden, the date the last house overrides the veto."

2-16-601. Title.

This subchapter shall be known as the "Arkansas Boll Weevil Suppression Eradication Act".

History. Acts 1991, No. 710, § 1.

CASE NOTES

Constitutionality.

There was no equal protection violation stemming from the fact that the Arkansas Boll Weevil Suppression Eradication Act, § 2-16-601 et seq., authorized cotton growers who elected to implement an eradication program to later elect to modify or recall that program; the Act created two separate means for achieving the legitimate purpose of eradicating the

boll weevil, one for the growers and one for the Arkansas State Plant Board, and the Board's power to impose an eradication program was independent of any action taken by the growers, thus, all the commercial cotton growers of Arkansas were subject to the same authority. *Rose v. Ark. State Plant Bd.*, 363 Ark. 281, 213 S.W.3d 607 (2005).

2-16-602. Declaration of policy — Purpose — Construction.

(a) The General Assembly has found and determined and does hereby declare that the boll weevil is a public nuisance, a pest, and a menace to the cotton industry. Due to the interstate nature of the boll weevil infestation, it is necessary to secure the cooperation of cotton growers and other state and federal governments to carry out a program of boll weevil suppression or eradication.

(b) The purpose of this subchapter is to secure the suppression or eradication of the boll weevil and to provide for certification of a cotton growers' organization to cooperate with state and federal agencies in the administration of any available cost-sharing programs for the suppression or eradication of the boll weevil.

(c) This subchapter should be liberally construed to achieve the purposes provided in this section.

History. Acts 1991, No. 710, § 2; 1997, No. 330, § 1.

2-16-603. Definitions.

As used in this subchapter:

(1)(A) "Assessment" means the amount charged to each cotton grower to finance, in whole or part, a program to suppress or eradicate the boll weevil in this state.

(B) The grower's charge will be calculated on a per-acre basis;

(2) "Boll weevil" means *Anthonomus grandis* Boheman in any state of development;

(3) "Certificate" means a document issued or authorized by the State Plant Board indicating that a regulated article is not contaminated with boll weevils;

(4) "Cotton" means any cotton plant or cotton plant product upon which the boll weevil is dependent for completion of any portion of its life cycle;

(5) "Cotton grower" means any person, other than a cash rent landlord, who is engaged in or has an economic risk in the business of producing, or causing cotton to be produced, for market;

(6) "Host" means any plant or plant product upon which the boll weevil is dependent for completion of any portion of its life cycle;

(7) "Infested" means actually infested with a boll weevil or so exposed to infestation that it would be reasonable to believe that an infestation exists;

(8) "Permit" means a document issued or authorized by the board to provide for the movement of regulated articles to restricted designations for limited handling, utilization, or processing;

(9) "Person" means any individual, partnership, corporation, company, society, or association, or other business entity;

(10) "Regulated article" means any article of any character carrying or capable of carrying the boll weevil, including, but not limited to, cotton plants, seed cotton, cottonseed, other hosts, gin trash, gin equipment, mechanical cotton pickers, and other equipment associated with cotton production, harvesting, or processing; and

(11) "State Plant Board" means the agricultural plant regulatory agency of the State of Arkansas.

History. Acts 1991, No. 710, § 3; 1997, No. 330, § 2.

2-16-604. Criminal penalties.

(a) Any person who shall violate any of the provisions of this subchapter or the regulations promulgated hereunder, or who shall alter, forge, or counterfeit, or use without authority any certificate or permit or other document provided for in this subchapter or in the regulations promulgated hereunder, shall be guilty of a Class C misdemeanor.

(b) Any person who shall, except in compliance with the regulations of the State Plant Board, move any regulated article into this state from any other state which the board found in the regulations is infested by the boll weevil shall be guilty of a Class C misdemeanor.

History. Acts 1991, No. 710, § 11.

2-16-605. Rules and regulations.

(a)(1) The State Plant Board may promulgate regulations restricting the pasturage of livestock, entry by persons, and location of honeybee colonies, or other activities affecting the boll weevil eradication program in any premises in an eradication zone which have been or are to be treated with pesticides or otherwise treated to cause the eradication of the boll weevil, or in any other area that may be affected by such treatments.

(2) The board may also adopt such other rules and regulations as it deems necessary to further effectuate the purposes of this subchapter.

(b) All rules and regulations promulgated pursuant to this subchapter shall be reviewed by the House Interim Committee on Agriculture, Forestry, and Economic Development and the Senate Interim Committee on Agriculture, Forestry, and Economic Development or appropriate subcommittees of the House Interim Committee on Agriculture, Forestry, and Economic Development and the Senate Interim Committee on Agriculture, Forestry, and Economic Development.

History. Acts 1991, No. 710, §§ 10, 18; 1997, No. 317, § 2.

2-16-606. Cooperative programs authorized.

The State Plant Board is hereby authorized to carry out programs to suppress or eradicate the boll weevil in this state. The board is authorized to cooperate with any agency of the federal government, any state, any other agency in this state, or any person engaged in growing, processing, marketing, or handling cotton, or any group of such persons in this state, in programs to effectuate the purposes of this subchapter and may enter into written agreements to effectuate such purposes. Such agreements may provide for cost sharing and for division of duties and responsibilities under this subchapter and may include other provisions generally to effectuate the purposes of this subchapter.

History. Acts 1991, No. 710, § 4.

2-16-607. Entry of premises — Suppression or eradication activities — Inspections.

(a) The State Plant Board, or its authorized representatives, shall have authority to enter cotton fields, cotton processing facilities, and other premises in order to carry out suppression or eradication activities, including, but not limited to, treatment with pesticides, monitoring, and destruction of growing cotton or other host plants, as may be necessary to carry out the provisions of this subchapter.

(b) The board shall have authority to make inspection of any fields or premises in this state and any property located therein or thereon for the purpose of determining whether such property is infested with the boll weevil. Such inspection and other activities may be conducted in a

reasonable manner without a warrant at any reasonable daylight hour falling between sunrise and sunset.

(c) Any judge of this state will, within his or her jurisdiction, and upon proper cause shown, issue a warrant giving the board the right of entry to any premises for the purpose of carrying out the provisions of this section or other activities authorized by this subchapter.

History. Acts 1991, No. 710, § 5; 1993, No. 854, § 1.

2-16-608. Reports.

Every person growing cotton in this state shall furnish to the State Plant Board, or its designated representative, on forms supplied by the board or its cooperators, such information as the board may require concerning the size and location of all commercial cotton fields and of noncommercial patches of cotton grown as ornamentals or for other purposes.

History. Acts 1991, No. 710, § 6; 1993, No. 854, § 2.

2-16-609. Quarantine.

(a) The State Plant Board is authorized to promulgate regulations quarantining this state, or any portion thereof, and governing the storage or other handling in the quarantined areas of regulated articles and the movement of regulated articles into or from such areas. The board shall determine when such action is necessary, or appears reasonably necessary, to prevent or retard the spread of the boll weevil.

(b) The board is also authorized to promulgate regulations governing the movement of regulated articles from other states or portions thereof into this state when such state is known to be infested with the boll weevil. The promulgation of these regulations shall conform in all aspects to the Arkansas Administrative Procedure Act, § 25-15-201 et seq., as amended, and sound principles of quarantines.

History. Acts 1991, No. 710, § 7.

2-16-610. Designation of eradication zones — Prohibition of planting of cotton — Participation in suppression eradication program — Penalties.

(a) The State Plant Board may designate by regulation one (1) or more areas of this state as eradication zones where boll weevil eradication programs will be undertaken.

(b)(1) The board may promulgate reasonable regulations regarding areas where cotton cannot be planted within an eradication zone when there is reason to believe it will jeopardize the success of the program or present a hazard to public health or safety.

(2) The board may issue regulations prohibiting the planting of noncommercial cotton in such eradication zones, and requiring that all growers of commercial cotton in the eradication zones participate in a program of boll weevil eradication including cost sharing as prescribed in the regulations.

(c) Notice of the prohibition and requirement shall be given by publication for one (1) day each week for three (3) successive weeks in a newspaper having general circulation in the affected area.

(d)(1) The board may set by regulation a reasonable schedule of penalty fees to be assessed when growers in designated eradication zones do not meet the requirements of regulations issued by the board with respect to reporting of acreage and participation in cost sharing as prescribed by regulation.

(2) The penalty fees shall not exceed a charge of twenty-five dollars (\$25.00) per acre per year. Any such penalty is in addition to any assessments otherwise due, which assessments shall also remain payable.

(e)(1) When a grower fails to meet the requirements of regulations promulgated by the board, the board in eradication zones may destroy cotton not in compliance with such regulations.

(2) Cost incurred by the board shall be assessed against the grower.

History. Acts 1991, No. 710, § 8; 1997, No. 330, §§ 3, 4.

CASE NOTES

Authority of Board.

Subdivision (b)(2) of this section specifically authorized the State Plant Board to issue regulations requiring commercial cotton growers to participate in and share the costs of an eradication program, and there was no limiting language in this section or § 2-16-614 making the Board's

authority dependent upon referendum approval; thus, the court rejected the growers' claim that a referendum under § 2-16-614 was required before any assessment for the costs of the eradication program could be levied under this section. *Rose v. Ark. State Plant Bd.*, 363 Ark. 281, 213 S.W.3d 607 (2005).

2-16-611. Destruction or treatment of volunteer or other non-commercial cotton in eradication zones — Liability.

(a) The State Plant Board shall have authority to destroy, or, at its discretion, cause to be treated with pesticides, volunteer or other noncommercial cotton and to establish procedures for the purchase and destruction of commercial cotton in eradication zones when the board deems such action necessary to effectuate the purposes of this subchapter.

(b)(1) No payment shall be made by the board to the owner or lessee for the destruction or injury of any cotton which was planted in an eradication zone after publication of notice as provided in this subchapter, or was otherwise handled in violation of this subchapter, or the regulations adopted pursuant thereto.

(2) However, the board shall pay for losses resulting from the destruction of cotton which was planted in such zones prior to promulgation of such notice.

History. Acts 1991, No. 710, § 9.

2-16-612. Certification of cotton growers' organization — Requirements.

(a) The State Plant Board may certify a cotton growers' organization for the purpose of entering into agreements with the State of Arkansas, other states, the federal government, and such other parties as may be necessary to carry out the purposes of this subchapter.

(b)(1) In order to be eligible for certification by the board, the cotton growers' organization must demonstrate to the satisfaction of the board that:

(A) It is a nonprofit organization and could qualify as a tax-exempt organization under § 501(a) of the Internal Revenue Code of 1986, as amended.

(B) Membership in the organization will consist of all cotton growers in an eradication zone.

(2) The organization shall have only one (1) class of members with each member entitled to only one (1) vote.

(c) The organization's board of directors shall be composed as follows:

(1) Two (2) Arkansas cotton growers recommended by the board, to be appointed by the Governor;

(2) Three (3) Arkansas cotton growers recommended by the Arkansas Farm Bureau Federation, to be appointed by the Governor;

(3) Three (3) Arkansas cotton growers recommended by the Agricultural Council of Arkansas, to be appointed by the Governor;

(4) One (1) representative of state government from this state recommended by the board, to be appointed by the Governor; and

(5) The cochairmen of the University of Arkansas Boll Weevil Eradication Technical Advisory Committee will serve as ex officio members of the cotton growers' organization board to serve in an advisory capacity.

(d)(1) All books and records of accounts and minutes of proceedings of the organization shall be available for inspection or audit by the board at any reasonable time.

(2) Employees or agents of the growers' organization who handle funds of the organization shall be adequately bonded in an amount to be determined by the board.

(e)(1) In addition to any authority granted the certified cotton growers' organization, the organization may borrow funds from any bona fide lender, including any state entity or authority, instruct the Arkansas Development Finance Authority to issue bonds pursuant to § 15-5-101 et seq., or to issue bonds in any other appropriate manner, any of which credit arrangements may be secured by a pledge of funds derived from assessments against cotton grower members of the organization.

(2)(A) Any funds borrowed and any funds derived from the sale of bonds shall be used exclusively for funding a boll weevil suppression or eradication program.

(B) Funds derived from assessments against cotton grower members of the organization shall be used to pay the operating expenses of the boll weevil suppression or eradication program and to repay any loans or obligations incurred by the boll weevil suppression or eradication program.

(f)(1) Upon being certified as the certified cotton growers' organization under this subchapter, the certified cotton growers' organization and its board of directors are granted all the immunities and protections allowed under § 16-120-101 et seq., notwithstanding the requirements of § 16-120-102(a).

(2) The certified cotton growers' organization may indemnify its directors against liability incurred in connection with their duties as board members.

(g)(1) In order for a cotton growers' organization to maintain certification by the board, it shall provide that its board of directors serve four-year terms of office except that on July 1, 2004, the terms shall be staggered so that, to the extent possible, an equal number of members' terms shall expire each year.

(2) Members of the board of directors may succeed themselves.

(3)(A) Within the parameters of subdivision (g)(3)(B) of this section, the cotton growers' organization shall ensure that the five (5) eradication zones as they existed on January 1, 2003, are represented on the board of directors in proportion to the number of acres of cotton planted in each zone using the prior three (3) years' average acreage to determine the proportional representation.

(B) Beginning July 1, 2004, the cotton growers' organization shall cause its board of directors to be composed of:

(i) At least one (1) member but no more than (2) members who reside within the Southeast Boll Weevil Eradication Zone as it existed on January 1, 2003;

(ii) At least one (1) member but no more than (2) members who reside within the Southwest Boll Weevil Eradication Zone as it existed on January 1, 2003;

(iii) At least one (1) member but no more than (2) members who reside within the Central Boll Weevil Eradication Zone as it existed on January 1, 2003;

(iv) At least one (1) member but no more than (2) members who reside within the Northeast Ridge Boll Weevil Eradication Zone as it existed on January 1, 2003; and

(v) At least one (1) member but no more than (2) members who reside in the Northeast Boll Weevil Eradication Zone as it existed on January 1, 2003.

(4) As vacancies occur, they shall be filled in a manner that will, to the extent possible, ensure the proportional representation required in subdivision (g)(3)(A) of this section.

History. Acts 1991, No. 710, § 12; 1993, No. 854, § 3; 1995, No. 529, § 1; 1997, No. 330, §§ 5, 6; 2003, No. 1726, § 1.

U.S. Code. Section 501(a) of the Internal Revenue Code of 1986, referred to in this section, is codified as 26 U.S.C. § 501(a).

2-16-613. Certification of cotton growers' organization — Revocation.

(a)(1) Upon determination by the State Plant Board that the organization meets the requirements of § 2-16-612, the board shall certify the organization as the official cotton growers' organization.

(2) Such certification shall be for the purposes of this subchapter only and shall not affect other organizations or associations of cotton growers established for other purposes.

(b) The board shall certify only one (1) such organization and may revoke the certification of the organization if at any time the organization shall fail to meet the requirements of this subchapter.

(c) The debts of this organization, should there be any, shall not become the liability of the board.

History. Acts 1991, No. 710, § 13.

2-16-614. Referendum — Assessments.

(a)(1) At the request of the certified cotton growers' organization, the State Plant Board shall authorize a referendum among cotton growers in a designated region on the question of whether an assessment shall be levied upon cotton growers in that region to offset, in whole or in part, the cost of boll weevil suppression, preeradication, eradication, or maintenance programs authorized by this subchapter or any other law of this state.

(2) The program shall be designed on a regional basis to reflect the differences in boll weevil infestation and the relative costs of financing boll weevil suppression and eradication programs in the respective regions.

(b)(1) The assessment levied under this subchapter shall be based upon the number of acres of cotton planted in the eradication area.

(2) The amount of the assessment, the period of time for which it shall be levied, how it shall be levied, when it shall be paid, and the geographical area to be covered by the assessment shall be determined by the board and established by regulations pursuant to this section.

(3) The annual assessment shall not exceed fifty dollars (\$50.00) per acre.

(c)(1) All affected cotton growers shall be entitled to vote in any such referendum; provided, however, that the affected cotton growers produced a cotton crop for harvest, or had an interest therein, in the designated region conducting the referendum in the crop year immediately preceding the year in which the referendum is conducted.

(2) A cotton grower may vote through a power of attorney evidenced in writing, including, but not limited to, a power of attorney recognized

by the Farm Service Agency or its successor. The board or its co-operators shall determine any questions of eligibility to vote.

(3) Each person who is eligible to vote in the referendum shall be mailed a ballot upon which to cast a vote for or against the boll weevil suppression and eradication program.

(4) Passage of the referendum shall require an affirmative vote of two-thirds ($\frac{2}{3}$) of those voting in the referendum.

(d)(1) The assessments approved under this subchapter shall be collected by the certified cotton growers' organization or such other agency or entity designated by the board from the affected cotton growers.

(2) The assessments collected by the board or such other agency or entity designated by the board under this subchapter shall be promptly remitted to the certified cotton growers' organization under such terms and conditions as the board shall deem necessary to ensure that the assessments are used in a sound program of eradication or suppression of the boll weevil.

(e) The certified organization shall provide to the board an annual audit of its accounts performed by a certified public accountant.

(f) The assessments collected by the board under this subchapter shall not be state funds.

(g)(1) In addition to the authority granted in this section for a referendum among cotton growers, the board may conduct a separate referendum among cotton growers in the southwest corner of the state, within boundaries to be defined by the board, on the question of whether an assessment shall be levied upon cotton growers in the defined area to provide funds to fund in whole or in part the cost of a boll weevil suppression or eradication program.

(2) Any such regional referendum shall be conducted in the same manner as any other referendum authorized in this section, and any assessments levied pursuant to such a referendum shall be subject to the same uses and limitations and shall be made, collected, and remitted in the same manner as assessments levied pursuant to any other referenda conducted under this subchapter.

History. Acts 1991, No. 710, § 14; 1993, No. 854, § 4; 1995, No. 529, § 2; 1997, No. 330, § 7.

A.C.R.C. Notes. The reference to Farm

Service Agency in subsection (c) may be a reference to the Consolidated Farm Service Agency established at 7 U.S.C. § 6932.

CASE NOTES

In General.

Section 2-16-610(b)(2) specifically authorized the Arkansas State Plant Board to issue regulations requiring commercial cotton growers to participate in and share the costs of an eradication program, and there was no limiting language in § 2-16-610 or this section making the Board's

authority dependent upon referendum approval; thus, the court rejected the growers' claim that a referendum under this section was required before any assessment for the costs of the eradication program could be levied under § 2-16-610. *Rose v. Ark. State Plant Bd.*, 363 Ark. 281, 213 S.W.3d 607 (2005).

2-16-615. Conduct of referendum.

The arrangements for and management of any referendum held under this subchapter shall be under the direction of the certified organization. The organization shall bear all expenses incurred in conducting the referendum, to include furnishing the ballots and arranging for the necessary poll holders.

History. Acts 1991, No. 710, § 15.

2-16-616. Subsequent referenda.

(a) In the event any referendum conducted under this subchapter fails to receive the required number of affirmative votes, the certified organization may call other referenda, with the consent of the State Plant Board.

(b)(1) After the passage of any referendum, the eligible voters shall be allowed by subsequent referenda to be held upon recommendation of the certified cotton growers' organization to vote on whether to eliminate or modify the program.

(2) Upon petition by one-third ($\frac{1}{3}$) of the cotton growers within a designated region established under § 2-16-614, the certified cotton growers' organization shall be required to conduct a subsequent referendum on whether to eliminate or modify the program, provided that the certified cotton growers' organization is required to hold no more than one (1) petitioned referendum for each designated region during any given calendar year.

(3) Passage of the question called in the subsequent referendum requires that a two-thirds ($\frac{2}{3}$) majority of those voting approve the subsequent referendum.

(4) All the requirements for an initial referendum must be met in subsequent referenda.

(c) If an approved eradication program is discontinued for any reason, or the certified cotton growers' organization is abolished or loses its certification for any reason, assessments approved, levied, or otherwise collectible under this subchapter on the date of the event remain valid as necessary to pay the financial obligations of the certified cotton growers' organization.

History. Acts 1991, No. 710, § 16;
1993, No. 854, § 5; 1997, No. 330, § 8.

2-16-617. Failure to pay assessments — Extensions — Exemption.

(a)(1) A cotton grower who fails to pay when due and upon reasonable notice any assessment levied under this subchapter shall be subject to a per-acre penalty as established in the State Plant Board's regulations in addition to the assessment.

(2) A cotton grower who fails to pay all assessments, including penalties, within thirty (30) days' notice of penalty shall destroy any cotton plants growing on his or her acreage which is subject to the assessment. Any such cotton plants which are not destroyed shall be deemed to be a public nuisance, and the public nuisance may be abated in the same manner as any public nuisance.

(b) The board may petition the circuit court of the judicial circuit in which the public nuisance is located to have the nuisance condemned and destroyed, with all costs of destroying to be levied against the grower. This injunctive relief shall be available to the board notwithstanding the existence of any other legal remedy, and the board shall not be required to file a bond.

(c)(1) In addition to any other remedies for the collection of assessments, including penalties, the board may secure a lien upon cotton subject to the assessments.

(2)(A) If the cotton was grown on a cost-share basis, the lien may be perfected on the landowner's share and the grower's share of the cotton.

(B) Any buyer of cotton shall take free of the lien if he or she has not received written notice of the lien from the board or if he or she has paid for the cotton by a check in which the board is named as joint payee.

(3) The amount of the lien on the cotton shall reflect the landowner's and grower's proportionate share of the assessment.

(d)(1)(A) No gins in the State of Arkansas shall gin any cotton for any cotton grower from Arkansas or from any other state unless and until that grower files with the respective gin a certificate of compliance issued by the board certifying that the grower has paid all fees, assessments, penalties, and costs imposed and required pursuant to this subchapter, unless a grower has been granted an extension by the board in compliance with subsection (e) of this section.

(B) It is the responsibility of each grower to procure a certificate of compliance or proof that an exemption for compliance has been granted from the board by September 1 of each successive crop year and to file same with a gin.

(2)(A) Any gin that gins cotton for any cotton grower who has not filed a current valid certificate of compliance issued by the board shall be assessed a penalty to be established by board regulations.

(B) Any cotton grower will be subject to having a lien placed on the following year's crop for any unpaid assessments or penalties incurred in the previous year.

(e)(1) The board shall by regulation establish a procedure in which a cotton grower can apply for exemption from payment of any assessment or penalty imposed in this section, on the basis that the payment of the assessment or the penalty will impose undue financial hardship on the grower, and shall prescribe the criteria to be used in determining undue financial hardship.

(2)(A) Any cotton grower who wishes to request an exemption from payment of the assessment, or the penalty, or both, shall apply for the exemption on forms prescribed by the board.

(B) A separate application must be filed for each calendar year for which the cotton grower seeks an exemption, and each such application shall contain information on which the grower relies to justify an exemption on the basis of undue financial hardship.

(C) The application form shall include an oath or affirmation of the applicant as to the truth of all information contained in or accompanying the application.

(3)(A) The board shall forward each completed exemption application form and any information accompanying the form to the cotton growers' organization certified pursuant to § 2-16-612.

(B) The certified cotton growers' organization shall determine whether each applicant qualifies for a hardship exemption based on the information contained in or accompanying the application form.

(4) If the certified organization determines that the payment of the assessment or the penalty, or both, would impose undue financial hardship on a cotton grower who has applied for an exemption, the organization may:

(A) Exempt the cotton grower from payment of the assessment or the penalty, or both; or

(B) Permit the cotton grower to pay the assessment or penalty, or both, on an installment payment plan and prescribe the payment schedule.

(5) Upon making a determination on any application for exemption, the certified organization shall notify the board of its determination, which shall be binding on the applicant.

(6) Upon receipt of notice of a determination by the organization, the board shall promptly notify the affected cotton grower of the determination.

(7) If an exemption is denied, the assessment and penalties for the year in which the application is made will be due at the time they would otherwise have been due if the application had not been filed or within thirty (30) days after the date the notice of the adverse determination is received by the cotton grower, whichever is later.

History. Acts 1991, No. 710, § 17;
1993, No. 854, § 6; 1995, No. 529, §§ 3, 4;
2003, No. 1726, § 2.

SUBCHAPTER 7 — ARKANSAS FIRE ANT ADVISORY BOARD

SECTION.

2-16-701. Creation.

2-16-702. Members.

2-16-703. Chair — Meetings.

SECTION.

2-16-704. Regulations.

2-16-705. Annual report.

Cross References. Red imported fire ant districts, § 14-286-101 et seq.

Effective Dates. Acts 1993, No. 268, § 13; Feb. 26, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly that fire ants are becoming a serious problem in this state; that it is urgent that appropriate action be taken to provide for expanded research concerning the fire ant; that this act is designed to establish a Fire Ant Advisory Board to promote such research and to assist in planning and executing the research. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 250, § 258; Feb. 24, 1997. Emergency clause provided: "It is hereby found and determined by the Gen-

eral Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor [sic], it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

2-16-701. Creation.

(a) The Arkansas Fire Ant Advisory Board is hereby created to accept all gifts, grants, and other moneys from any source for the purpose of financing new and ongoing fire ant research and educational programs and providing counsel in planning and executing such research and educational programs.

(b) These moneys will route through the University of Arkansas Agricultural Experiment Station, the University of Arkansas Cooperative Extension Service, or the University of Arkansas Agricultural Development Council at Fayetteville for use by the board and fire ant researchers in the School of Forest Resources at the University of Arkansas at Monticello or other researchers in cooperative efforts with researchers at the University of Arkansas at Monticello.

History. Acts 1993, No. 268, §§ 1, 2; 1995, No. 112, § 1.

2-16-702. Members.

(a) The Arkansas Fire Ant Advisory Board shall be composed of the Vice President for Agriculture of the University of Arkansas System, the head of the Department of Entomology at the University of Arkansas at Fayetteville or his or her representative, the Director of the State Plant Board or his or her representative, and the following to be appointed from an ant-infested area by the chair:

- (1) A representative of an Arkansas environmental interest group;
- (2) A county extension agent or a member of the general public;

- (3) A representative of the farm or ranch industry;
- (4) A representative of the horticultural or nursery industry; and
- (5) A representative of the Arkansas Pest Control Association.

(b)(1) Members of the Arkansas Fire Ant Advisory Board appointed by the chair shall be appointed for four-year terms.

(2) Persons appointed to fill vacancies shall serve for the remainder of the unexpired term.

(c) Members of the Arkansas Fire Ant Advisory Board shall serve without compensation. Arkansas Fire Ant Advisory Board members may receive expense reimbursement in accordance with § 25-16-901 et seq.

History. Acts 1993, No. 268, §§ 4-6; 1997, No. 250, § 4; 1999, No. 1119, § 1.

Publisher's Notes. As originally enacted by Acts 1993, No. 268, § 5, subdivision (b)(1) read as follows: "Members of the board shall serve staggered terms, so that the terms of two appointed board members expire on January 1 of each odd-numbered year, and their successors shall be appointed for four-year terms."

2-16-703. Chair — Meetings.

(a) The Vice President for Agriculture of the University of Arkansas system shall serve as chair of the Arkansas Fire Ant Advisory Board.

(b) The board shall meet at the call of the chair and no less frequently than annually.

(c) The chair shall provide necessary meeting space and administrative services for the board.

History. Acts 1993, No. 268, §§ 3, 7; 1997, No. 577, § 1.

2-16-704. Regulations.

The Arkansas Fire Ant Advisory Board may promulgate regulations necessary for the implementation of this subchapter.

History. Acts 1993, No. 268, § 9.

2-16-705. Annual report.

No later than January 1 of each year, the Arkansas Fire Ant Advisory Board shall report to the directors of the University of Arkansas Agricultural Experiment Station and the Cooperative Extension Service regarding all moneys received and expended by it during the preceding fiscal year.

History. Acts 1993, No. 268, § 8.

SUBCHAPTER 8 — THISTLE CONTROL AND ERADICATION

SECTION.

2-16-801. Annual assessment.

2-16-802. Interagency cooperation.

2-16-801. Annual assessment.

(a) As a part of its assessment of activities and accomplishments, each conservation district in this state shall annually assess the thistle problem within the district and report to the Arkansas Natural Resources Commission no later than September 30 each year regarding the extent of the thistle problem within the district and methods proposed to be used to eradicate and control the thistles.

(b) The commission may provide financial assistance to the conservation districts from any funds available for that purpose.

History. Acts 1997, No. 1030, § 1.

2-16-802. Interagency cooperation.

A coordinated, concerted effort by the various agencies affected by the thistle problem is necessary to realize a proper remedy and therefore it is requested that the State Plant Board, Arkansas Forestry Commission, Arkansas Natural Resources Commission, University of Arkansas Cooperative Extension Service, Natural Resources Conservation Service of the United States Department of Agriculture, the several conservation districts, and all other interested agencies cooperate with each other and coordinate their efforts toward the eradication of thistles in this state.

History. Acts 1997, No. 1030, § 2.

CHAPTER 17**WAREHOUSING OF GRAIN****SUBCHAPTER.**

1. GENERAL PROVISIONS. [RESERVED.]
2. PUBLIC WAREHOUSES — GENERALLY.
3. PUBLIC WAREHOUSES — TITLE TO GRAIN.
4. PUBLIC WAREHOUSES — RECEIVERSHIP.

RESEARCH REFERENCES

- Am. Jur.** 78 Am. Jur. 2d, Warehouses, of Grain — Arkansas Stands Alone in Protecting the Rights of Depositors of § 7 et seq.
C.J.S. 93 C.J.S., Warehousemen, § 1 et Grain in Public Warehouses, etc., 9 U. Ark. Little Rock L.J. 699.
U. Ark. Little Rock L.J. Note, Storers

SUBCHAPTER 1 — GENERAL PROVISIONS

[Reserved]

SUBCHAPTER 2 — PUBLIC WAREHOUSES — GENERALLY

SECTION.

- 2-17-201. Title.
- 2-17-202. Definitions.
- 2-17-203. Applicability.
- 2-17-204. Penalties.
- 2-17-205. Duty to enforce.
- 2-17-206. State license.
- 2-17-207. License applications.
- 2-17-208. Filing schedule of charges.
- 2-17-209. Bond requirements.
- 2-17-210. Amount of bond.
- 2-17-211. Issuance or denial of license.
- 2-17-212. Posting of license.
- 2-17-213. Annual license fee.
- 2-17-214. Renewal of license.
- 2-17-215. Suspension, cancellation, or revocation of licenses.
- 2-17-216. Replacement of license.
- 2-17-217. Net assets required.
- 2-17-218. Insurance required.
- 2-17-219. Receipt of tendered grain.
- 2-17-220. Receipts and records.

SECTION.

- 2-17-221. Contents of receipts.
- 2-17-222. Preparation of forms for warehouse receipts.
- 2-17-223. Numbering of receipts.
- 2-17-224. Copy of receipts.
- 2-17-225. Accuracy of receipts.
- 2-17-226. Duty of warehouseman to deliver grain.
- 2-17-227. Partial delivery.
- 2-17-228. Return of receipt.
- 2-17-229. Verification of signature.
- 2-17-230. Sale or pledge of receipts.
- 2-17-231. Accepting grain for shipment.
- 2-17-232. Grain inspector.
- 2-17-233. Duty to maintain quality of grain.
- 2-17-234. Records to be maintained.
- 2-17-235. Examinations and inspections.
- 2-17-236. Insolvent warehouses.
- 2-17-237. Discontinuance of business.
- 2-17-238. Disposition of revenues.

Publisher's Notes. Acts 1979, No. 83, § 42, provided that anticipatory action to implement the provisions of this subchapter could be taken prior to the effective date of this subchapter.

Effective Dates. Acts 1979, No. 83, § 43: July 1, 1979. Emergency clause provided: "It is hereby found and determined by the General Assembly that there is an urgent need for regulation and licensing of grain warehouses in the State of Arkansas. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, welfare and safety shall be in full force and effect from and after July 1, 1979."

Acts 1983, No. 264, § 3 [4]: Feb. 25, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that grain producers routinely deliver their grain to warehouses and do not obtain warehouse receipts but merely unpriced scale tickets; that un-

priced scale tickets should be nonnegotiable warehouse receipts and thereby provide the producer a secured position; and that this act is immediately necessary to so provide. Therefore, an emergency is hereby declared to exist, and this act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1993, No. 783, § 13: Mar. 29, 1993. Emergency clause provided: "It is hereby found and determined by the Seventy-Ninth General Assembly meeting in Regular Session that the provisions of this act are of critical importance to the state's ability to continue the duties, responsibilities, and functions of the State Plant Board. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

RESEARCH REFERENCES

Ark. L. Rev. Note, Act 401 of the Public Grain Warehouse Law: An Exception to the U.C.C. Concept of Voidable Title, 37 Ark. L. Rev. 293.

CASE NOTES

Federal Agencies.

Although the Commodity Credit Corporation, an agency of the United States Department of Agriculture, is not a grower or producer protected under § 2-

17-301 et seq., it is protected by § 2-17-201 et seq. which does not conflict with and was not repealed by § 2-17-301 et seq. *Reynolds v. Commodity Credit Corp.*, 300 Ark. 441, 780 S.W.2d 15 (1989).

2-17-201. Title.

This subchapter shall be known as the "Arkansas Public Grain Warehouse Law".

History. Acts 1979, No. 83, § 1; A.S.A. 1947, § 77-1301.

CASE NOTES

Cited: *Reynolds v. Commodity Credit Corp.*, 300 Ark. 441, 780 S.W.2d 15 (1989).

2-17-202. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Person" means individuals, corporations, partnerships, and all associations of two (2) or more persons having a joint or common interest;

(2) "Commissioner" means the Public Grain Warehouse Commissioner, who shall be the Director of the State Plant Board or his or her designated representative;

(3) "Grain" means all grains for which standards have been established pursuant to the United States Grain Standards Act, as amended, and shall include rice, as defined by the standards of the United States Department of Agriculture;

(4) "Stored grain" means any grain received in any public grain warehouse, located in this state, if it is not purchased and beneficially owned by the public grain warehouseman;

(5) "Public grain warehouse" means any building, structure, or other protected enclosure in this state used for the purpose of storing grain for a consideration;

(6) "Public grain warehouseman" means any person who operates a public grain warehouse as defined in this section; and

(7)(A) "Warehouse receipt" means a licensed warehouse receipt issued under this subchapter and an unpriced scale ticket.

(B) Including unpriced scale tickets within the definition of “warehouse receipt” does not make the unpriced scale tickets negotiable.

History. Acts 1979, No. 83, § 2; 1983, No. 264, § 1; A.S.A. 1947, § 77-1302.

Standards Act referred to in this section is codified as 7 U.S.C. § 71 et seq.

U.S. Code. The United States Grain

CASE NOTES

Cited: Tucker v. Durham, 285 Ark. 264, 686 S.W.2d 402 (1985); Cooper, Inc. v. Farm Bureau Mut. Ins. Co., 289 Ark. 218,

711 S.W.2d 155 (1986); Reynolds v. Commodity Credit Corp., 300 Ark. 441, 780 S.W.2d 15 (1989).

2-17-203. Applicability.

(a) The provisions of this subchapter shall apply to all public grain warehouses and to the operations of public grain warehouses whether or not any of the grain therein is owned by the warehouseman, unless the public grain warehouse is licensed under the provisions of the United States Warehouse Act, as amended.

(b) The provisions and definitions of the Uniform Commercial Code, § 4-1-101 et seq., relating to warehouse receipts, to the extent not inconsistent with this subchapter, shall govern warehouse receipts issued by public grain warehousemen, and the other provisions of the Uniform Commercial Code, § 4-1-101 et seq. shall also be applicable to the provisions of this subchapter to the extent not inconsistent with this subchapter.

History. Acts 1979, No. 83, § 3; A.S.A. 1947, § 77-1303.

house Act referred to in this section is codified as 7 U.S.C. § 241 et seq.

U.S. Code. The United States Ware-

CASE NOTES

Cited: Tucker v. Durham, 285 Ark. 264, 686 S.W.2d 402 (1985); Reynolds v. Com-

modity Credit Corp., 300 Ark. 441, 780 S.W.2d 15 (1989).

2-17-204. Penalties.

(a) Any person who issues a warehouse receipt for grain without holding a valid public grain warehouse license or who commits any willful violation of any provision of this subchapter shall be guilty of a Class D felony.

(b) Any unintentional or negligent violation of this subchapter shall be a Class A misdemeanor.

History. Acts 1979, No. 83, § 37; A.S.A. 1947, § 77-1337.

Sentence of imprisonment, § 5-4-401.

Cross References. Imposition of fines, § 5-4-201.

2-17-205. Duty to enforce.

The State Plant Board shall carry out and enforce the provisions of this subchapter and is empowered to:

- (1) Promulgate rules and regulations;
- (2) Carry out necessary inspections;
- (3) Appoint and fix the duties of personnel; and
- (4) Provide such equipment as may be necessary to enforce the provisions hereof.

History. Acts 1979, No. 83, § 4; A.S.A. 1947, § 77-1304.

CASE NOTES

Cited: Banque Indosuez v. King, 46 Ark. App. 270, 878 S.W.2d 432 (1994).

2-17-206. State license.

(a) No person shall operate a public grain warehouse or issue a warehouse receipt without first having obtained a license pursuant to this subchapter, unless the public grain warehouse is licensed under the provisions of the United States Warehouse Act, as amended.

(b) All public grain warehouses licensed under the United States Warehouse Act, as amended, shall file with the State Plant Board copies of their current licenses and copies of all subsequent licenses or renewals so as to always have copies of current licenses on file with the board.

History. Acts 1979, No. 83, § 5; A.S.A. 1947, § 77-1305.

U.S. Code. The United States Ware-

house Act referred to in this section is codified as 7 U.S.C. § 241 et seq.

2-17-207. License applications.

(a)(1) Applications for licenses under this subchapter are to be made on forms prescribed by the Public Grain Warehouse Commissioner for each warehouse.

(2) Every application is to be accompanied by an application fee of one hundred fifty dollars (\$150) and a certified financial statement in a form prescribed by the commissioner and any further information the commissioner may by regulation require.

(b)(1) If a warehouseman operates one (1) or more warehouses in the same city or town in conjunction with each other, if only one (1) set of books is kept for all the warehouses and scale tickets, and if warehouse receipts and checks of but one (1) series are issued for grain received or stored therein, then only one (1) license and bond shall be required for the operation of all the warehouses. In these cases, the license fee prescribed in this section shall be computed on the basis of the aggregate capacity of all warehouses operated by the licensee.

(2) The use for the storage of grain by a licensed warehouseman of a facility which is in the same city or town as licensed facilities and is neither licensed nor exempted, or for other violation of the provisions of this section, shall be cause for suspension or revocation of any license issued to the warehouseman for the storage of grain.

(c) Licenses issued under this subchapter are not transferable. Any person acquiring a new or existing public grain warehouse must apply for a license to operate the warehouse, subject to other provisions of this subchapter.

History. Acts 1979, No. 83, § 6; A.S.A. 1947, § 77-1306.

2-17-208. Filing schedule of charges.

(a)(1) Prior to the issuance of a license under this subchapter, the public grain warehouseman shall file a copy of his or her schedule of charges for storage and other services with the Public Grain Warehouse Commissioner.

(2) If the public grain warehouseman desires to make any changes in the schedule of charges during the license period, he or she shall file with the commissioner a statement in writing showing the change at least thirty (30) days prior to its effective date.

(b) Each public grain warehouseman shall keep conspicuously posted the schedule of charges for storage and other services as so filed and shall strictly adhere to these charges.

History. Acts 1979, No. 83, § 8; A.S.A. 1947, § 77-1308.

2-17-209. Bond requirements.

(a)(1)(A)(i) Before any license is issued to any warehouseman, the warehouseman shall file with the Public Grain Warehouse Commissioner a surety bond executed by the public grain warehouseman as principal and by a corporate surety licensed to do business in this state as surety.

(ii) The bond shall run to the State of Arkansas and be for the benefit of all depositors or storers of grain, their legal representatives, attorneys, or assigns.

(B)(i) No bond shall be accepted for the purposes of this subchapter until it has been approved by the commissioner.

(ii) The bond shall be conditioned upon the warehouseman delivering all stored grain or payment of the value thereof upon the surrender of the warehouse receipt.

(iii) The commissioner may require the increases in the amount of the bond, from time to time, as he or she may deem necessary for the protection of the storage receipt holders.

(2)(A) The aggregate liability of the surety to all depositors or storers of grain shall not exceed the sum of the bond.

(B) The bond may be cancelled at any time by the surety by giving written notice to the commissioner of its intention to cancel the bond. All liability thereunder shall terminate thirty (30) days after the receipt of the notice by the commissioner, except that the notice shall not affect any claims arising under the bond, whether presented or not, before the effective date of the cancellation notice.

(b) In lieu of the bond required in subsection (a) of this section, an applicant for a license may be a self-insurer by posting with the commissioner cash or any combination of securities, the market value of which is readily ascertainable and, if negotiable, by delivery or assignment, of the kinds described in § 23-63-806, United States government obligations, § 23-63-809, municipal or county utilities, § 23-63-813, international banks, and § 23-63-814, corporate bonds and debentures.

History. Acts 1979, No. 83, § 15; A.S.A. 1947, § 77-1315.

CASE NOTES

ANALYSIS

Protected Depositors.
Sellers Not Protected.
Warehouse Receipts.

Protected Depositors.

The Commodity Credit Corporation, an agency of the federal government, is a protected depositor of grain under the Arkansas Public Grain Warehouse Law, and is entitled to share in the pro-rata disbursement of a warehouseman's bond. *Reynolds v. Commodity Credit Corp.*, 300 Ark. 441, 780 S.W.2d 15 (1989).

Sellers Not Protected.

A bond issued to a grain warehouseman covers only those who hold warehouse receipts for grain stored; it does not cover

a farmer who sells his or her grain to warehouseman but does not receive the promised payment. *Farm Bureau Mut. Ins. Co. v. Wright*, 285 Ark. 228, 686 S.W.2d 778 (1985).

Warehouse Receipts.

A bond issued by a surety to a public grain warehouseman was intended only for the protection of holders of "warehouse receipts"; therefore, since the farmers admittedly held only unpriced scale tickets and not warehouse receipts, there could be no recovery under the bond and, hence, no cause of action against the surety. *Cooper, Inc. v. Farm Bureau Mut. Ins. Co.*, 289 Ark. 218, 711 S.W.2d 155 (1986) (decision prior to 1983 amendment of § 2-17-202, which included unpriced scale ticket in definition of warehouse receipt).

2-17-210. Amount of bond.

(a)(1) The amount of bond to be furnished for each public grain warehouse shall be fixed at a rate of:

(A) Twenty cents (20¢) per bushel for the first one million (1,000,000) bushels of licensed capacity;

(B) Fifteen cents (15¢) per bushel for the next one million (1,000,000) bushels of licensed capacity; and

(C) Ten cents (10¢) per bushel for all licensed capacity over two million (2,000,000) bushels.

(2) In no case shall the amount of the bond be less than twenty thousand dollars (\$20,000), except as prescribed in subsections (c) and (d) of this section.

(3) The licensed capacity shall be equal to the maximum number of bushels of grain that the public grain warehouse can accommodate for storage.

(b)(1)(A) A public grain warehouseman who is licensed or is applying for licenses to operate two (2) or more public grain warehouses may furnish a single bond. This bond shall meet the requirements of this subchapter to cover all public grain warehouses within the state.

(B) In these cases, all public grain warehouses to be covered by the bond shall be deemed to be one (1) warehouse for purposes of determining the amount of bond required under subsection (a) of this section.

(2) The aggregate licensed capacity of all the warehouses shall be used in determining the amount of the bond.

(c)(1) Any deficiency in the net assets required by § 2-17-217 shall be supplied by an increase in the amount of the warehouseman's bond.

(2) In any other case in which the Public Grain Warehouse Commissioner finds that conditions exist which warrant requiring additional bond, there shall be added to the amount of the bond such further amount as determined to be reasonable by the commissioner.

(d)(1) The commissioner may make exceptions to the bonding requirements of this section for good cause shown upon a finding that the requirements would substantially impair the warehouseman's ability to continue operations as a public grain warehouse and that the exception will not materially affect the protection of storage receipt holders under this subchapter.

(2) The exceptions must be reviewed at least annually.

History. Acts 1979, No. 83, § 16; A.S.A. 1947, § 77-1316.

CASE NOTES

Sellers Not Protected.

A bond issued to a grain warehouseman covers only those who hold warehouse receipts for grain stored; it does not cover a farmer who sells his or her grain to

warehouseman but does not receive the promised payment. *Farm Bureau Mut. Ins. Co. v. Wright*, 285 Ark. 228, 686 S.W.2d 778 (1985).

2-17-211. Issuance or denial of license.

(a) Upon satisfaction of the requirements of this subchapter and any applicable regulations by an applicant, the Public Grain Warehouse Commissioner shall issue a license to operate a public grain warehouse.

(b)(1) If after proper application the commissioner denies any person a license to operate a public grain warehouse, the commissioner shall transmit immediately to the applicant, by certified mail, an order so providing, which shall state the reasons for the denial.

(2)(A) In the event the applicant is dissatisfied with the decision of the commissioner, the applicant may request a hearing with the commissioner to appear and defend its compliance with all appropri-

ate regulations or give evidence that all deficiencies have been corrected.

(B)(i) A hearing shall be held within ninety (90) days of the request.

(ii) If after the hearing the commissioner denies the applicant a license, the commissioner shall transmit immediately to the applicant by certified mail an order so providing which shall state the reasons for the denial.

(C) In the event the applicant is dissatisfied with the decision of the commissioner after the hearing, the applicant may institute proceedings for judicial review in the circuit court of the county where the public grain warehouse is located or in the Pulaski County Circuit Court within thirty (30) days after service upon the applicant of the commissioner's final order, pursuant to § 25-15-212.

History. Acts 1979, No. 83, § 10; A.S.A. 1947, § 77-1310.

2-17-212. Posting of license.

Immediately upon receipt of his or her license or of any modification or extension thereof, the public grain warehouseman shall post it and thereafter keep it posted, until suspended or terminated, in a conspicuous place in the office of the public grain warehouse to which the license applies where receipts issued by the public grain warehouseman are delivered to depositors.

History. Acts 1979, No. 83, § 11; A.S.A. 1947, § 77-1311.

2-17-213. Annual license fee.

Subsequent to the issuance of an initial license under this subchapter, every applicant shall pay an annual license fee based upon the capacity of the warehouse. The fee shall be determined by the Public Grain Warehouse Commissioner but shall be no less than two hundred fifty dollars (\$250) nor more than eight hundred dollars (\$800).

History. Acts 1979, No. 83, § 7; A.S.A. 1947, § 77-1307; Acts 1993, No. 783, § 3.

2-17-214. Renewal of license.

(a) If a public grain warehouseman desires to renew his or her license for an additional year, application for the renewal shall be made on a form prescribed by the Public Grain Warehouse Commissioner.

(b) At least sixty (60) days prior to the expiration of each license, the commissioner shall notify each public grain warehouseman of the date of the expiration and furnish the public grain warehouseman with the renewal form.

History. Acts 1979, No. 83, § 12; A.S.A. 1947, § 77-1312.

2-17-215. Suspension, cancellation, or revocation of licenses.

(a) If a public grain warehouseman is convicted of any crime involving fraud or deceit or if the Public Grain Warehouse Commissioner determines that any public grain warehouseman has violated any of the provisions of this subchapter or any of the rules and regulations adopted by the commissioner pursuant to this subchapter, the commissioner may suspend, cancel, or revoke the license of the public grain warehouseman.

(b)(1) All proceedings for the suspension, cancellation, or revocation of licenses shall be before the commissioner. The proceedings shall be in accordance with rules and regulations which shall be adopted by the commissioner.

(2)(A) No suspension, cancellation, or revocation of any license is lawful unless, prior to the institution of the proceedings, the commissioner has given notice by mail to the licensee of facts or conduct warranting the intended action and the licensee has been given an opportunity to show compliance with all lawful requirements for the retention of the license.

(B) If the commissioner finds that public health, safety, or welfare imperatively requires emergency action and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action, which proceedings shall be promptly instituted and determined.

(C)(i) Whenever the commissioner shall suspend, cancel, or revoke any license, he or she shall prepare an order so providing which shall state the reason or reasons for the suspension, cancellation, or revocation.

(ii) The order shall be sent by certified mail by the commissioner to the licensee at the address of the public grain warehouse licensed.

(iii) Within thirty (30) days after service upon the licensee of the order, the licensee, if dissatisfied with the order of the commissioner, may institute proceedings for judicial review in the circuit court of the county where the public grain warehouse is located or in the Pulaski County Circuit Court.

(c) In case a license issued to a public grain warehouseman expires or is suspended, revoked, or cancelled by the commissioner or his or her designated representative, the license shall be immediately returned to the commissioner, and the public grain warehouseman shall forthwith comply with the provisions of § 2-17-237.

History. Acts 1979, No. 83, § 13; A.S.A. 1947, § 77-1313.

2-17-216. Replacement of license.

Upon satisfactory proof of the loss or destruction of a license issued to a public grain warehouseman, a duplicate or a new license may be issued under the same number.

History. Acts 1979, No. 83, § 14; A.S.A. 1947, § 77-1314.

2-17-217. Net assets required.

(a)(1) Above all exemptions and liabilities, each public grain warehouseman shall have and maintain total net assets available for the payment of any indebtedness arising from the conduct of the public grain warehouse in an amount equal to at least ten cents (10¢) multiplied by the maximum number of bushels of grain for which the public grain warehouse is licensed.

(2)(A) No person may be licensed as a public grain warehouseman unless he or she has available net assets of at least ten thousand dollars (\$10,000).

(B) Any deficiency in net assets required above the minimum of ten thousand dollars (\$10,000) may, at the discretion of the Public Grain Warehouse Commissioner, be supplied by a commensurate increase in the amount of the public grain warehouseman's bond.

(C)(i) In determining total available net assets, credit may be given for insurable assets such as buildings, machinery, equipment, and merchandise inventory only to the extent of the current market value of the assets and only to the extent that the assets are protected by insurance against loss or damage.

(ii) The insurance shall be in the form of lawful policies issued by one (1) or more insurance companies authorized to do business and subject to service of process in suits brought in this state, and which provide that no cancellation shall be effective unless thirty (30) days' advance notice of the cancellation is given to the commissioner.

(b) If a public grain warehouseman is licensed or is applying for license to operate two (2) or more public grain warehouses, the maximum total number of bushels which all the facilities will accommodate when stored in the manner customary to the warehouses, as determined by the commissioner, shall be considered in determining whether the public grain warehouseman meets the available net assets requirement of subsection (a) of this section.

(c) For the purposes of this section only, capital stock as such shall not be considered a liability.

History. Acts 1979, No. 83, § 9; A.S.A. 1947, § 77-1309.

2-17-218. Insurance required.

(a)(1)(A) At all times, every public grain warehouseman shall keep the grain stored in the public grain warehouse insured by an insurance company authorized to do business in this state.

(B) The grain is to be insured for its full market value against loss by fire, inherent explosion, lightning, and windstorm, and failure to do so shall make the public grain warehouseman liable for the grain.

(2) All policies shall provide that no cancellation shall be effective unless thirty (30) days' prior notice is given the Public Grain Warehouse Commissioner.

(b) If fire, inherent explosion, lightning, or windstorm shall destroy or damage all or part of the grain stored in any public grain warehouse, the public grain warehouseman shall, upon demand by the holder of any warehouse receipt for the grain and upon being presented with the warehouse receipt, make settlement for the fair market value at the time of the loss after deducting the warehouse charges.

History. Acts 1979, No. 83, § 20; A.S.A. 1947, § 77-1320.

2-17-219. Receipt of tendered grain.

(a)(1) Every public grain warehouseman shall receive for storage or shipment, so far as the available capacity for storage of the public grain warehouse shall permit, all grain tendered to him or her in the usual course of business.

(2) However, a public grain warehouse owned and operated as a cooperative may decline to accept grain tendered by a nonmember if the cooperative reasonably believes that its available capacity will be required to serve the members of the cooperative.

(b)(1) The depositor and the public grain warehouseman may agree upon a sample taken from the lot of grain to be offered for storage as being a true and representative sample.

(2) The depositor and the public grain warehouseman may agree upon the grade of the grain offered for storage, and a warehouse receipt may be issued on the agreed grade.

History. Acts 1979, No. 83, § 17; A.S.A. 1947, § 77-1317.

2-17-220. Receipts and records.

(a)(1) Receipts must be issued for all grain stored in a warehouse in accordance with regulations adopted under this subchapter.

(2) Receipts need not be issued against nonstorage grain, but each warehouseman shall keep accurate records of the weights, kinds, and grades, if graded, of all lots of nonstorage grain received into and delivered from his or her warehouse.

(b) Whenever the purpose for which any lot of nonstorage grain was received into a warehouse is changed so that its approximate delivery

period from the warehouse becomes indeterminate, receipts shall be issued to cover the grain.

(c) Records required under this section with respect to nonstorage grain shall be retained, as a part of the records of the warehouse, for a period of one (1) year after December 31 of the year in which the lot of nonstorage grain is delivered from the warehouse.

History. Acts 1979, No. 83, § 25; 1983, No. 264, § 2; A.S.A. 1947, § 77-1325.

2-17-221. Contents of receipts.

(a) Every receipt issued for grain stored in a public grain warehouse shall conform to the requirements of § 4-7-202 and in addition shall embody within its written or printed terms:

(1) A statement that the holder of the receipt or the depositor of the grain shall demand the delivery of the grain on or before a date not later than one (1) year from the date specified by the public grain warehouseman;

(2) The net weight, number of bushels, and the percentage of dockage;

(3) The words "NOT NEGOTIABLE", or "NEGOTIABLE", according to the nature of the receipt, clearly and conspicuously printed or stamped thereon; and

(4) That the holder of the receipt or the depositor of the grain shall demand the delivery of the grain not later than the expiration of one (1) year from the date of the receipt.

(b)(1) Every receipt, whether negotiable or nonnegotiable, issued for grain stored in a warehouse shall specify a period, not exceeding one (1) year, for which the grain is accepted for storage under this subchapter.

(2) The warehouseman shall, in the absence of some lawful excuse, issue a new receipt for a further specified period not to exceed one (1) year, provided that the following conditions are met:

(A) Demand for issuance of a new receipt;

(B) Surrender of the old receipt by the lawful holder at or before the expiration of the period specified therein; and

(C) An offer to satisfy the warehouseman's lien.

(c) Every negotiable receipt issued shall, in addition to conforming with the requirements of subsection (a) of this section, embody within its written or printed terms a form of endorsement which may be used by the depositor or his or her authorized agent for showing the ownership of, and liens, mortgages, or other encumbrances on, the grain covered by the receipt.

(d) A public grain warehouseman shall not insert any language in any warehouse receipt or make any contract with respect to any warehouse receipt which purports to limit the liabilities or responsibilities imposed on him or her by law.

History. Acts 1979, No. 83, § 26; A.S.A. 1947, § 77-1326.

CASE NOTES

Negotiable Receipts.

Warehouse receipts being negotiable instruments, their transfer carried the title to the cotton represented by them, subject

to outstanding superior title. *Sewell v. Federal Compress & Whse. Co.*, 194 Ark. 199, 106 S.W.2d 209 (1937) (decision under prior law).

2-17-222. Preparation of forms for warehouse receipts.

(a) The Public Grain Warehouse Commissioner shall prescribe the form of all warehouse receipts, and no other character or form of warehouse receipt shall be issued except those so authorized.

(b) The commissioner shall be authorized to have printed all warehouse receipts issued by public grain warehousemen.

(c) The cost of printing and distribution of warehouse receipts shall be charged to the grain warehouse.

History. Acts 1979, No. 83, § 27; A.S.A. 1947, § 77-1327.

2-17-223. Numbering of receipts.

All warehouse receipts issued by a public grain warehouse shall be numbered consecutively. No two (2) receipts bearing the same number shall be issued from the same warehouse during any one (1) year, except in the case of a lost or destroyed receipt.

History. Acts 1979, No. 83, § 28; A.S.A. 1947, § 77-1328.

2-17-224. Copy of receipts.

At least one (1) copy of all receipts shall be made. All copies shall have clearly and conspicuously printed or stamped on them the words "COPY — NOT NEGOTIABLE".

History. Acts 1979, No. 83, § 29; A.S.A. 1947, § 77-1329.

2-17-225. Accuracy of receipts.

No warehouse receipt shall be issued except upon actual delivery of grain into storage in the warehouse from which it purports to be issued, nor shall any receipt be issued for a greater quantity of grain than was contained in the lot or parcel received for storage, nor shall more than one (1) receipt be issued for the same lot of grain, except in cases where a receipt for a part of a lot is desired, and then the aggregate receipts for a particular lot shall cover that lot and no more.

History. Acts 1979, No. 83, § 30; A.S.A. 1947, § 77-1330.

2-17-226. Duty of warehouseman to deliver grain.

(a)(1) It shall be the duty of the public grain warehouseman to deliver grain to the holder of a warehouse receipt within ten (10) days of the demand for the redemption of the receipt if no lawful excuse for not delivering the grain exists.

(2)(A) In the event the public grain warehouseman fails to deliver grain to the holder of a warehouse receipt within ten (10) days of the demand, the holder of the warehouse receipt may make demand of the surety for payment under the bond.

(B)(i) The surety has the responsibility to pay within fifteen (15) days following receipt by the surety of the notice of the demand for redemption.

(ii) Any holder of a warehouse receipt issued by a public grain warehouseman who had made demand for redemption of the receipt, which demand was, without lawful excuse, not satisfied within ten (10) days, shall notify the Public Grain Warehouse Commissioner in writing. The holder of the receipt shall have the right to bring action against the public grain warehouseman and the surety on the public grain warehouseman's bond for payment of the market value of the grain represented by the warehouse receipt. The market value shall be determined as of the date of the demand, plus legal interest accrued from the date of the demand.

(3)(A) In the event the public grain warehouseman is a self-insurer as provided in § 2-17-209, the holder of a warehouse receipt shall have the right to bring action against the public grain warehouseman to the extent of the amount posted in lieu of the bond.

(B)(i) The commissioner shall pay to the holder of the warehouse receipt, to the extent of the bond posted, any judgment obtained by the holder of a warehouse receipt against a self-insurer.

(ii) The commissioner may also pay to the holder of a warehouse receipt the amount of the market value of the grain if the public grain warehouseman agrees to the payment.

(4) The license of the public grain warehouseman shall be suspended upon the payment until such time as the warehouseman posts a bond pursuant to this subchapter or posts with the commissioner a sum equivalent to that paid by the commissioner on behalf of the warehouseman.

(b)(1) In all actions in which judgment is rendered against any surety company under the provisions of this section, if it appears from evidence that the surety company has willfully and without just cause refused to pay the loss upon demand, the court, in rendering judgment, shall allow the plaintiff the amount of the plaintiff's expenses, including court costs and attorney's fees, to be recovered and collected as part of the costs.

(2) The amount of any payment of costs and attorney's fees under this subsection will not reduce the surety's liability on its bond.

History. Acts 1979, No. 83, § 31; A.S.A. 1947, § 77-1331.

2-17-227. Partial delivery.

If a warehouseman delivers only a part of a lot of grain for which he or she has issued a negotiable receipt under this subchapter, he or she shall take up and cancel the receipt and issue a new receipt in accordance with the regulations in this subchapter for the undelivered portion of the grain. The new receipt shall show the date of issuance and also indicate the number and date of the receipt first issued.

History. Acts 1979, No. 83, § 32; A.S.A. 1947, § 77-1332.

2-17-228. Return of receipt.

(a) Except as permitted by law or by the regulations in this subchapter, a warehouseman shall not deliver grain for which he or she has issued a negotiable receipt until the receipt has been returned to him or her and cancelled. He or she shall not deliver grain for which he or she has issued a nonnegotiable receipt until the receipt has been returned to him or her or until he or she has obtained a written order for the receipt from the person lawfully entitled to the delivery or his or her authorized agent.

(b) Before delivery is made of the last portion of a lot of grain covered by a nonnegotiable receipt, the receipt itself shall be surrendered.

History. Acts 1979, No. 83, § 33; A.S.A. 1947, § 77-1333.

2-17-229. Verification of signature.

(a) Each person to whom a nonnegotiable receipt is issued shall furnish the warehouseman with a statement in writing, indicating the person having power to authorize delivery of grain covered by the receipt, together with the bona fide signature of the person.

(b) No licensed warehouseman shall honor an order for the release of grain covered by a nonnegotiable receipt until he or she has first ascertained that the person issuing the order has authority to order the release and that the signature of the releasing party is genuine.

History. Acts 1979, No. 83, § 34; A.S.A. 1947, § 77-1334.

2-17-230. Sale or pledge of receipts.

A public grain warehouseman may make a valid sale or pledge of any warehouse receipts issued for grain of which the warehouseman is the owner, either solely or jointly in common with others. The recital of ownership in the receipt shall constitute notice of the right to sell or

pledge the grains and of the title of specific lien of the transferee or pledgee upon the warehouseman's grain represented by the receipts.

History. Acts 1979, No. 83, § 35; A.S.A. 1947, § 77-1335.

2-17-231. Accepting grain for shipment.

(a) If grain is offered for storage in any licensed public grain warehouse and the public grain warehouseman does not have storage space to handle the grain, the public grain warehouseman, with the written consent of the owner, may accept grain for shipment to another public grain warehouse where storage is available.

(b) The receipt to cover grain to be transported to and stored in another public grain warehouse shall embody within its written or printed terms, in addition to the requirements of § 2-17-221, the name and location of the public grain warehouse to which the grain will be shipped for storage.

History. Acts 1979, No. 83, § 36; A.S.A. 1947, § 77-1336.

2-17-232. Grain inspector.

During all regular business hours, each public grain warehouse shall employ a grain inspector, who may be the public grain warehouseman himself or herself if the public grain warehouseman is a natural person. He or she shall inspect and weigh all grain received by the warehouse and shall be responsible for the accuracy of weights noted on all warehouse receipts.

History. Acts 1979, No. 83, § 18; A.S.A. 1947, § 77-1318.

2-17-233. Duty to maintain quality of grain.

(a) It shall be the public grain warehouseman's duty and obligation to condition and maintain the quantity and quality of all grain as receipted.

(b)(1) If the condition of any grain offered for storage is such that it probably will adversely affect the condition of grain in the public grain warehouse, the public grain warehouseman shall not receive the grain for storage or store the grain.

(2) If the public grain warehouse has separate bins or is equipped with proper conditioning apparatus, the public grain warehouseman may receive the grain for storage in separate bins or may condition it and then store it in a manner which will not lower the grade of other grain.

History. Acts 1979, No. 83, § 19; A.S.A. 1947, § 77-1319.

2-17-234. Records to be maintained.

(a) Every public grain warehouseman shall keep, in a place of safety, complete, separate, and correct records and accounts pertaining to the public grain warehouse. These shall include, but not be limited to, records and accounts of all grain received and withdrawn, all unissued receipts and tickets in its possession, copies of all receipts and tickets issued by it, and the receipts and tickets returned to and cancelled by it.

(b) The records shall be retained by the public grain warehouseman for a period of five (5) years.

History. Acts 1979, No. 83, § 21; A.S.A. 1947, § 77-1321.

2-17-235. Examinations and inspections.

(a)(1)(A) Every public grain warehouse shall be examined by the Public Grain Warehouse Commissioner, each year.

(B) The cost of the examination shall be included in the annual license fee.

(2)(A) The Public Grain Warehouse Commissioner, at his or her discretion, may make additional examinations of any public grain warehouse at any time.

(B) If any material discrepancy is found as a result of additional examination, the cost of the examination is to be paid by the public grain warehouseman.

(b) Upon application for license renewal, every public grain warehouse shall submit a copy of its financial statement to the commissioner. The financial statement shall have been prepared by a certified public accountant and sworn to by the certified public accountant and the public grain warehouseman.

(c) The commissioner may, at his or her discretion, inspect the public grain warehouse's business, facilities, equipment, inventories, property, books, records, accounts, papers, minutes of proceedings held at the public grain warehouse, and any other records which the commissioner deems relevant to the operation of the public grain warehouse.

(d) All scales used for the weighing of property in public grain warehouses shall be subject to tests during regular business hours by the Arkansas Bureau of Standards of the State Plant Board.

(e) All records, reports, and findings of the commissioner required or issued pursuant to this subchapter may be released to any interested person and shall be made available to public inspection.

History. Acts 1979, No. 83, § 22; A.S.A. 1947, § 77-1322.

Publisher's Notes. Acts 1993, Nos. 610 and 624, § 1, provided: "The Arkansas Bureau of Standards, created by Act 482 of 1963, as amended, the same being

A.C.A. 4-18-201 et seq., and its functions, powers, duties, assets, properties, and appropriations are transferred by a type 2 transfer [see § 25-2-105] to the State Plant Board."

2-17-236. Insolvent warehouses.

(a) If it shall be discovered that any public grain warehouse is insolvent or that its continuance in business will seriously jeopardize the interest of its creditors or grain depositors, it shall be the duty of the commissioner to close the warehouse, to take charge of all the property and effects thereof, and to notify the surety.

(b) Upon taking charge of any warehouse, the Public Grain Warehouse Commissioner shall, as soon as practicable, ascertain by a thorough examination into its affairs its actual financial condition. Whenever the commissioner shall become satisfied that the corporation cannot resume business or liquidate its indebtedness to the satisfaction of its creditors, the commissioner shall report the fact of its insolvency to the Attorney General. Immediately upon receipt of the notice, the Attorney General shall institute proper proceedings in the proper court for the purpose of having a receiver appointed.

History. Acts 1979, No. 83, § 23; A.S.A. 1947, § 77-1323.

2-17-237. Discontinuance of business.

(a) Any person operating a public grain warehouse who desires to discontinue the operation at the expiration of his or her license or whose license is suspended, revoked, or cancelled by the Public Grain Warehouse Commissioner or his or her designated representative shall notify the commissioner, all holders of warehouse receipts, and all parties storing grain in the public grain warehouse, if known, or if not known, by advertising in the newspaper of largest general circulation in the community in which the public grain warehouse is located weekly for four (4) consecutive weeks, at least thirty (30) days prior to the date of expiration of his or her license, of his or her intention to discontinue the public grain warehouse business.

(b) The owners of the grain shall remove or cause to be removed their grain from the public grain warehouse before the expiration of the license.

History. Acts 1979, No. 83, § 24; A.S.A. 1947, § 77-1324.

2-17-238. Disposition of revenues.

All revenues collected under the provisions of this subchapter by the State Plant Board shall be deposited into the Plant Board Fund to be used for the maintenance, operation, support, and improvement of the board.

History. Acts 1979, No. 83, § 38; A.S.A. 1947, § 77-1338; Acts 1993, No. 783, § 4.

SUBCHAPTER 3 — PUBLIC WAREHOUSES — TITLE TO GRAIN

SECTION.

2-17-301. Definitions.

2-17-302. Applicability.

SECTION.

2-17-303. Title to grain.

2-17-304. Waiver of rights.

Effective Dates. Acts 1981, No. 401, § 7: Mar. 10, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that Arkansas grain producers are experiencing severe losses due to their stored grain in public warehouses being sold or encumbered by the public grain warehousemen without their authorization, and that this act is

immediately necessary to clarify the law and grant protection to Arkansas farmers. Therefore, an emergency is hereby declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

RESEARCH REFERENCES

Ark. L. Notes. Pedersen, Crop Financing: A Guide to Arkansas Law, 1988 Ark. L. Notes 31.

Copeland, A Statutory Primer: Article 2 of the U.C.C. — When Do Its Rules Apply?, 1990 Ark. L. Notes 39.

Ark. L. Rev. Note, Act 401 of the Public Grain Warehouse Law: An Exception to the U.C.C. Concept of Voidable Title, 37 Ark. L. Rev. 293.

Note, Simmons First National Bank v. Wells: An Interpretation of the Uniform Commercial Code's Consignment Rule, 37 Ark. L. Rev. 312.

U. Ark. Little Rock L.J. Survey — Business Law, 10 U. Ark. Little Rock L.J. 89.

CASE NOTES**Federal Agencies.**

Although the Commodity Credit Corporation, an agency of the United States Department of Agriculture, is not a grower or producer protected under § 2-

17-301 et seq., it is protected by § 2-17-201 et seq. which does not conflict with and was not repealed by § 2-17-301 et seq. Reynolds v. Commodity Credit Corp., 300 Ark. 441, 780 S.W.2d 15 (1989).

2-17-301. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Grain" means rice, soybeans, wheat, corn, rye, oats, barley, flaxseed, sorghum, mixed grain, and other food grains, feed grains, and oil seeds;

(2) "Public grain warehouseman" means any person, firm, or corporation who operates any building, structure, or other protected enclosure used for the purpose of storing grain for a consideration; and

(3) "Owner" means the farmer who grows and produces grain and includes the owner of the land from which the grain is produced to the extent that he or she has an interest in the grain, and includes persons,

firms, and corporations engaged in the growing and producing of grain whether it be as tenant, renter, landowner, or otherwise.

History. Acts 1981, No. 401, § 1; A.S.A. 1947, § 77-1339.

CASE NOTES

Owner.

While lessor may have come within the definition of "owner" as set forth in subdivision (3) of this section because of lessor's interest in the grain under its statutory landlord's lien, under § 18-41-101 this

lien existed for only six months. *Rufus Comer Farms v. First State Bank*, 47 Ark. App. 3, 884 S.W.2d 265 (1994).

Cited: *Simmons First Nat'l Bank v. Wells*, 279 Ark. 204, 650 S.W.2d 236 (1983).

2-17-302. Applicability.

The provisions of this subchapter shall apply to all public grain warehousemen and to the operations of public grain warehouses, unless the public grain warehouse is licensed under the provisions of the United States Warehouse Act, as amended.

History. Acts 1981, No. 401, § 5; A.S.A. 1947, § 77-1342.

U.S. Code. The United States Ware-

house Act referred to in this section is codified as 7 U.S.C. § 241 et seq.

2-17-303. Title to grain.

(a) Ownership of grain shall not change by reason of an owner's delivering grain to a public grain warehouseman. No public grain warehouseman shall sell or encumber any grain in his or her possession unless the owner of the grain has by written document transferred title of the grain to the warehouseman.

(b) Notwithstanding any provision of the Uniform Commercial Code, as amended, § 4-1-101 et seq., to the contrary or any other law to the contrary, all sales and encumbrances of grain by public grain warehousemen are void and convey no title unless the sales and encumbrances are supported by written documents executed by the owners specifically conveying title to the grain to the public warehousemen.

History. Acts 1981, No. 401, § 2; A.S.A. 1947, § 77-1340.

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Adams, "Clear Title" for Farm Products: Congress and the Arkansas Legislature Attempt to

Solve a Troublesome Problem, 10 U. Ark. Little Rock L.J. 619.

CASE NOTES

ANALYSIS

Applicability.

Advance Payments.

Specific Conveyance by Written Document.

Voidable Sales.

Applicability.

A federally licensed warehouse is exempt from this section. In re Bearhouse, Inc., 84 B.R. 552 (Bankr. W.D. Ark. 1988).

Landlord's claim for rent from the proceeds of grain sales was not protected by this section. Rufus Comer Farms v. First State Bank, 47 Ark. App. 3, 884 S.W.2d 265 (1994).

Advance Payments.

Unless transfer of title from a producer to a warehouseman has occurred, the grain is to be regarded as stored rather than sold, so the giving and taking of an advance payment does not remove the storer from the bond's protection under § 2-17-209. Tucker v. Durham, 285 Ark. 264, 686 S.W.2d 402 (1985).

Specific Conveyance by Written Document.

The language of this section that no title

shall be transferred unless title is specifically conveyed to the warehousemen by a written document signed by the owner must be taken literally, and to do less would be to disregard the plain intent and purpose of the statute; thus, language that could be interpreted to mean that the owner was selling his or her grain was not sufficient to comply with the dictates of this section. Cooper, Inc. v. Farm Bureau Mut. Ins. Co., 289 Ark. 218, 711 S.W.2d 155 (1986).

Voidable Sales.

This section does not say a farmer can void an outright sale he or she makes to a warehouseman; rather, only a sale made by a warehouseman of grain delivered to him or her or storage can be voided. Farm Bureau Mut. Ins. Co. v. Wright, 285 Ark. 228, 686 S.W.2d 778 (1985).

This section allows an owner to void a sale made by a warehouseman. Rufus Comer Farms v. First State Bank, 47 Ark. App. 3, 884 S.W.2d 265 (1994).

Cited: Simmons First Nat'l Bank v. Wells, 279 Ark. 204, 650 S.W.2d 236 (1983).

2-17-304. Waiver of rights.

Any owner may, by written document signed by him or her or his or her agent, waive any and all rights conferred upon the owner by this subchapter.

History. Acts 1981, No. 401, § 4; A.S.A. 1947, § 77-1341.

SUBCHAPTER 4 — PUBLIC WAREHOUSES — RECEIVERSHIP

SECTION.

2-17-401. Definitions.

2-17-402. Filing of petition.

2-17-403. Plan for disposition of grain.

2-17-404. Date for hearing.

2-17-405. Notice and parties.

2-17-406. Publication of appointment.

2-17-407. Designation of employee to appear.

2-17-408. Arkansas Administrative Procedure Act.

SECTION.

2-17-409. Joining of surety.

2-17-410. Time for filing claims.

2-17-411. Merchandiser to effect sale.

2-17-412. Distribution of grain or proceeds.

2-17-413. Temporary continuation of business.

2-17-414. Reimbursement of expenses.

2-17-415. Distribution plan.

2-17-416. Final report.

Effective Dates. Acts 1983, No. 342, § 18; Mar. 7, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that farmers would be better served if state law would authorize the Grain Warehouse Commissioner to petition the proper court to serve as receiver in instances where the ware-

house becomes insolvent; and that this act is immediately necessary to so provide. Therefore, an emergency is hereby declared to exist, and this act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

2-17-401. Definitions.

(a) As used in this subchapter, unless the context otherwise requires:

(1) "Commissioner" means the Public Grain Warehouse Commissioner, who shall be the Director of the State Plant Board or his or her designated representative;

(2) "Warehouse" means a public grain warehouse licensed under § 2-17-201 et seq.;

(3) "License" means a license issued under § 2-17-201 et seq.

(b) All other terms in this subchapter shall have the same meaning as the same terms used in the Arkansas Public Grain Warehouse Law, § 2-17-201 et seq.

History. Acts 1983, No. 342, § 1; A.S.A. 1947, § 77-1343.

2-17-402. Filing of petition.

(a)(1) Following summary suspension of a license under § 2-17-215 or following a suspension or revocation of a license as otherwise provided in § 2-17-201 et seq., the Public Grain Warehouse Commissioner in his or her discretion may file a verified petition in the proper court requesting that the commissioner be appointed as a receiver to take custody of grain stored in the licensee's warehouse and to provide for the disposition of those assets in the manner provided in this subchapter and under the supervision of the court.

(2) The petition shall be filed in the county in which the warehouse is located.

(3) The proper court shall appoint the commissioner as receiver.

(b) Upon the filing of the petition, the court shall issue ex parte such temporary orders as may be necessary to preserve or protect the assets in receivership, or the value thereof, and the rights of depositors, until a plan of disposition is approved.

History. Acts 1983, No. 342, § 2; A.S.A. 1947, § 77-1344.

CASE NOTES

Cited: Reynolds v. Commodity Credit Corp., 300 Ark. 441, 780 S.W.2d 15 (1989).

2-17-403. Plan for disposition of grain.

(a) A petition filed by the Public Grain Warehouse Commissioner under § 2-17-402 shall be accompanied by the commissioner's plan for disposition of stored grain.

(b)(1) The plan may provide for the pro rata delivery of part or all of the stored grain to depositors holding warehouse receipts or unpriced scale tickets;

(2) The plan may provide for the sale under the supervision of the commissioner of part or all of the stored grain for the benefit of those depositors; or

(3) The plan may provide for any combination thereof, as the commissioner in his or her discretion determines to be necessary to minimize losses.

History. Acts 1983, No. 342, § 3; A.S.A. 1947, § 77-1345.

CASE NOTES

Cited: Tucker v. Durham, 285 Ark. 264, 686 S.W.2d 402 (1985).

2-17-404. Date for hearing.

(a) When a petition is filed by the Public Grain Warehouse Commissioner under § 2-17-402, the clerk of court shall set a date for hearing on the commissioner's proposed plan of disposition at a time not less than ten (10) nor more than fifteen (15) days after the date the petition is filed.

(b)(1) Copies of the petition, the notice of hearing, and the commissioner's plan of disposition shall be served upon the licensee and upon the surety company issuing the licensee's bond in the manner required for service of an original notice.

(2) A delay in effecting service upon the licensee or surety shall not be cause for denying the appointment of a receiver and shall not be grounds for invalidating any action or proceeding in connection therewith.

History. Acts 1983, No. 342, § 4; A.S.A. 1947, § 77-1346.

2-17-405. Notice and parties.

(a) The Public Grain Warehouse Commissioner shall cause a copy of each of the documents served upon the licensee under § 2-17-404 to be mailed by ordinary mail to every person holding a warehouse receipt or

unpriced scale ticket issued by the licensee, as determined by the records of the licensee or the records of the commissioner.

(b) The failure of any person referred to in this section to receive the required notification shall not invalidate the proceedings on the petition for the appointment of a receiver or any portion thereof.

(c) Persons referred to in this section are not parties to the action unless admitted by the court upon application therefor.

History. Acts 1983, No. 342, § 5; A.S.A. 1947, § 77-1347.

2-17-406. Publication of appointment.

When appointed as a receiver under this subchapter, the Public Grain Warehouse Commissioner shall cause notification of the appointment to be published once each week for two (2) consecutive weeks in a newspaper of general circulation in each of the counties in which the licensee maintains a business location and in a newspaper of general circulation in this state.

History. Acts 1983, No. 342, § 6; A.S.A. 1947, § 77-1348.

2-17-407. Designation of employee to appear.

The Public Grain Warehouse Commissioner may designate an employee of the commissioner to appear on behalf of the commissioner in any proceedings before the court with respect to the receivership and to exercise the functions of the commissioner as receiver, except that the commissioner shall:

- (1) Determine whether or not to petition for the appointment as receiver;
 - (2) Approve the proposed plan for disposition of stored grain;
 - (3) Approve the proposed plan for distribution of any cash proceeds;
- and
- (4) Approve the proposed final report.

History. Acts 1983, No. 342, § 7; A.S.A. 1947, § 77-1349.

2-17-408. Arkansas Administrative Procedure Act.

The actions of the Public Grain Warehouse Commissioner in connection with petitioning for appointment as a receiver and all actions pursuant to such appointment shall not be subject to the provisions of the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

History. Acts 1983, No. 342, § 8; A.S.A. 1947, § 77-1350.

2-17-409. Joining of surety.

(a) When the Public Grain Warehouse Commissioner is appointed as receiver under this subchapter, the surety on the bond of the licensee shall be joined as a party defendant by the commissioner.

(b)(1) If required by the court, the surety shall pay the bond proceeds, or so much thereof as the court finds necessary, into the court.

(2) When so paid, the surety shall be absolutely discharged from any further liability under the bond to the extent of the payment.

History. Acts 1983, No. 342, § 9; A.S.A. 1947, § 77-1351.

2-17-410. Time for filing claims.

(a) When appointed as receiver under this subchapter, the Public Grain Warehouse Commissioner is authorized to give notice in the manner specified by the court to persons holding warehouse receipts or unpriced scale tickets issued by the licensee to file their claims within sixty (60) days after the date of appointment.

(b) Failure to file a timely claim shall defeat the claim with respect to the surety bond and any grain or proceeds from the sale of grain, except to the extent of any excess remaining after all timely claims are paid in full.

History. Acts 1983, No. 342, § 10; A.S.A. 1947, § 77-1352.

2-17-411. Merchandiser to effect sale.

(a) When the court approves the sale of stored grain, the Public Grain Warehouse Commissioner shall employ a merchandiser to effect the sale of those commodities.

(b) A person employed as a merchandiser must meet the following requirements:

(1) The person shall be experienced or knowledgeable in the operation of warehouses licensed under § 2-17-201 et seq., and if the person has ever held a license issued under § 2-17-201 et seq., the person shall never have had that license suspended or revoked;

(2) The person shall be experienced or knowledgeable in the marketing of agricultural products; and

(3) The person shall not be the holder of a warehouse receipt or scale ticket issued by the licensee and shall not have a claim against the licensee, whether as a secured or unsecured creditor, and otherwise shall not have any pecuniary interest in the licensee or the licensee's business.

(c)(1) The merchandiser shall be entitled to reasonable compensation as determined by the commissioner.

(2) A sale of grain shall be made in a commercially reasonable manner and under the supervision of the warehouse section of the commissioner.

(3) The commissioner shall have authority to sell the stored grain, notwithstanding provisions of the Uniform Commercial Code, § 4-1-101 et seq., and any stored grain so sold shall be free of all liens and other encumbrances.

History. Acts 1983, No. 342, § 11;
A.S.A. 1947, § 77-1353.

2-17-412. Distribution of grain or proceeds.

(a) The plan of disposition, as approved by the court, shall provide for the distribution of the stored grain or the proceeds from the sale of stored grain or the proceeds from any surety bond, or any combination thereof, less expenses incurred by the Public Grain Warehouse Commissioner in connection with the receivership, to depositors on a pro rata basis as their interests are determined.

(b) Distribution shall be without regard to any setoff, counterclaim, or storage lien or charge.

History. Acts 1983, No. 342, § 12;
A.S.A. 1947, § 77-1354.

2-17-413. Temporary continuation of business.

The Public Grain Warehouse Commissioner may, with the approval of the court, continue the operation of all, or any part of, the business of the licensee on a temporary basis and take any other course of action or procedure which will serve the interests of the depositors.

History. Acts 1983, No. 342, § 13;
A.S.A. 1947, § 77-1355.

2-17-414. Reimbursement of expenses.

(a) The Public Grain Warehouse Commissioner shall be entitled to reimbursement out of stored grain or proceeds held in receivership for all expenses incurred as court costs or in handling and disposing of stored grains and for all other costs directly attributable to the receivership.

(b) The right of reimbursement of the commissioner shall be prior to any claims against the stored grain or proceeds of sale and shall constitute a claim against the surety bond of the licensee.

History. Acts 1983, No. 342, § 14;
A.S.A. 1947, § 77-1356.

2-17-415. Distribution plan.

(a)(1) In the event the approved plan of disposition requires the sale of stored grain or the distribution of proceeds from the surety bond, or both, the Public Grain Warehouse Commissioner shall submit to the court a proposed plan of distribution of those proceeds.

- (2) Upon such notice and hearing as may be required by the court, the court shall accept or modify the proposed plan.
- (b) When the plan is approved by the court and executed by the commissioner, the commissioner shall be discharged and the receivership terminated.

History. Acts 1983, No. 342, § 15;
A.S.A. 1947, § 77-1357.

2-17-416. Final report.

At the termination of the receivership, the Public Grain Warehouse Commissioner shall file a final report containing the details of his or her actions, together with such additional information as the court may require.

History. Acts 1983, No. 342, § 16;
A.S.A. 1947, § 77-1358.

CHAPTER 18
SEEDS

SECTION.	SECTION.
2-18-101. Definitions.	2-18-107. Improper use of terms.
2-18-102. Penalty — Revocation of certificate.	2-18-108. Intergovernmental cooperation.
2-18-103. Investigation and certification.	2-18-109. Aflatoxin levels.
2-18-104. Rules and regulations.	2-18-110. Testing for aflatoxin.
2-18-105. Fees.	2-18-111. Rules and regulations regarding aflatoxin.
2-18-106. Certificates of inspection.	

Preambles. Acts 1931, No. 73, contained a preamble which read: "Whereas, the necessity for high grade planting seed for agricultural crops is hereby recognized, the purpose of this act shall be to enable farmers to secure pure bred agricultural seeds true to variety, free from noxious weed seeds and free from plant diseases transmittable through the agency of planting seed and free from insect infestation ... "

Effective Dates. Acts 1997, No. 317, § 8: Mar. 3, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 10 of the First Extraordinary Session of 1995 abolished the Joint Interim Committee on Agriculture and Economic Development and in its place established separate House and Senate Committees; that various sections of the Arkansas Code refer to

the Joint Interim Committee on Agriculture and Economic Development and should be corrected to refer to the House and Senate Interim Committees; that this act so provides; and that this act should go into effect immediately in order to make the laws compatible as soon as possible. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

RESEARCH REFERENCES

Am. Jur. 3 Am. Jur. 2d, Agri., § 55.

C.J.S. 3 C.J.S., Agri., § 65 et seq.

2-18-101. Definitions.

As used in this chapter, unless the context otherwise requires:

- (1) "Board" means the State Plant Board;
- (2) "Person" means individuals, partnerships, corporations, associations, or two (2) or more individuals having a joint or common interest; and
- (3) "Seed" means any agricultural seeds or plants used to produce a crop.

History. Acts 1931, No. 73, § 1; Pope's Dig., § 12334; A.S.A. 1947, § 77-315.

2-18-102. Penalty — Revocation of certificate.

(a)(1) Any person shall be guilty of a violation who:

(A) Falsely advertises or proclaims that seed has been certified by the State Plant Board;

(B) Uses any emblem, label, or language for the purpose of misleading a person into believing that seed has been certified by the board when it has not;

(C) Misuses any tag, label, or certificate issued by the board;

(D) Obtains or attempts to obtain certification for seed or plants by making false statements or misrepresentations to the board or to the board's inspectors, deputies, or agents;

(E) Having received a certificate, violates any of the rules and regulations of the board made pursuant to this chapter; or

(F) Violates any agreement made as a condition for receiving a certificate.

(2) Upon conviction, an offender shall be punished by a fine of not less than twenty-five dollars (\$25.00) nor more than five hundred dollars (\$500) for each offense.

(b)(1) When the person holds a certificate from the board, the certificate, after a hearing before the Director of the State Plant Board has been given to the person, shall be revoked by the director regardless of whether a prosecution is commenced.

(2)(A) Any person whose certificate is revoked by the director shall be entitled to an appeal to the board.

(B) The board's decision shall be final.

History. Acts 1931, No. 73, § 7; Pope's Dig., § 12354; A.S.A. 1947, § 77-320; Acts 2005, No. 1994, § 10.

Amendments. The 2005 amendment

substituted "violation" for "misdemeanor" in (a)(1); and deleted "or" at the end of (a)(1)(A)-(D).

2-18-103. Investigation and certification.

(a)(1) The State Plant Board is empowered to investigate and certify to varietal purity and fitness for planting of agricultural seed on request of the grower thereof.

(2)(A) For this purpose, the board shall set up, in its rules and regulations, one (1) or more classifications of seed, designating the classifications as "Registered" and "Certified" or by any other one (1) or more names which it may specify; and

(B) It shall specify, in its rules and regulations, the standards which seed must meet and the methods by which seed must be handled in order to be certified under the classifications.

(b) Any person applying for certification of seed must, if required by the board, produce satisfactory evidence as to character, qualifications as a seed breeder, and possession of such facilities for the growing and handling of purebred seed as may be deemed necessary by the board.

History. Acts 1931, No. 73, § 3; Pope's Dig., § 12350; A.S.A. 1947, § 77-316.

CASE NOTES

Liability of Seller.

Where there was no warranty, express or implied, other than the certificate of the State Plant Board, seller was not liable for breach of warranty in the sale of such seed. *Smith v. Tatum*, 198 Ark. 802, 131

S.W.2d 619 (1939), questioned, *Walcott & Steele, Inc. v. Carpenter*, 246 Ark. 95, 436 S.W.2d 820 (1969), questioned, *Smith v. Great Atlantic & Pacific Tea Co.*, 170 F.2d 474 (8th Cir. 1948) (decision under prior law).

2-18-104. Rules and regulations.

The State Plant Board:

(1) Shall promulgate all rules and regulations necessary to carry into effect the purpose of this chapter, which is to provide supplies of high-grade seed, true to name and free from disease, for planting purposes;

(2) Shall make rules and regulations to protect the interest of breeders who have developed high-quality strains of seed; and

(3) May appoint or may authorize the Director of the State Plant Board to appoint such deputies as shall be necessary to carry into effect the purpose of this chapter.

History. Acts 1931, No. 73, § 4; Pope's Dig., § 12351; A.S.A. 1947, § 77-317.

Cross References. Rules and regulations authorized, § 2-16-207.

2-18-105. Fees.

(a) To cover costs of inspection and certification, the State Plant Board shall require reasonable fees of all applicants in advance. These fees shall be deposited in a separate fund and shall be used in carrying out the purposes of this chapter.

(b)(1) To cover costs of promotion and advertising of certified seed, the board after a public hearing shall establish by regulation promotion and advertising fees which shall be collected in advance. The fees shall be assessed upon the acreage grown for certified agricultural seed production or upon the number of certified tags and labels sold for production of certified seed from the acreage.

(2) Those fees collected for seed promotion and advertising shall be remitted by the board to the Arkansas Seed Dealers Association and the Arkansas Seed Growers Association, or their successors, which shall establish and administer their own promotion and advertising programs.

(3) Prior to collecting the fees under this subsection or increasing those fees hereafter, the board shall seek the advice of the House Interim Committee on Agriculture, Forestry, and Economic Development and the Senate Interim Committee on Agriculture, Forestry, and Economic Development.

History. Acts 1931, No. 73, § 5; Pope's Dig., § 12352; A.S.A. 1947, § 77-318; Acts 1991, No. 955, § 1; 1997, No. 317, § 3.

Cross References. Deposit of fees in State Treasury, § 2-16-104.

2-18-106. Certificates of inspection.

(a) Persons whose seed has met the standards set up by the State Plant Board and who have complied with all the provisions of this chapter and with all the rules and regulations of the board made pursuant to this chapter shall receive from the board the proper certificate of inspection designating the classification of seed.

(b) Each bag or other container of seed sold under the classification designated by a certificate of the board shall bear an appropriate tag or label securely attached to it.

(c) Certificates issued under the provisions of this section shall run one (1) crop season only.

History. Acts 1931, No. 73, § 6; Pope's Dig., § 12353; Acts 1985, No. 279, § 1; A.S.A. 1947, § 77-319.

2-18-107. Improper use of terms.

(a) It shall be unlawful for any person to use the terms "certified" or "registered" as applied to the quality of seed or plants or to use any other term applying to seed classifications promulgated by the State Plant Board, without first having applied for and received the proper certificate from the board.

(b) Any person violating the provisions of this section shall be punished as provided in § 2-18-102.

History. Acts 1931, No. 73, § 8; Pope's Dig., § 12355; A.S.A. 1947, § 77-321.

2-18-108. Intergovernmental cooperation.

In administering this chapter, the State Plant Board is authorized to cooperate to the fullest extent with other agencies of the state and federal government.

History. Acts 1931, No. 73, § 9; Pope's Dig., § 12356; A.S.A. 1947, § 77-322.

2-18-109. Aflatoxin levels.

The level of aflatoxin in Arkansas-grown grain and seed sold or distributed in this state shall be monitored by the State Plant Board.

History. Acts 1999, No. 1374, § 1.

2-18-110. Testing for aflatoxin.

Methods of sampling and analysis of the grain and seed described in § 2-18-109 shall meet the standards prescribed by the Grain Inspection, Packers and Stockyards Administration of the United States Department of Agriculture.

History. Acts 1999, No. 1374, § 2.

2-18-111. Rules and regulations regarding aflatoxin.

The State Plant Board may establish rules and regulations necessary to implement the provisions of §§ 2-18-109, 2-18-110, and this section.

History. Acts 1999, No. 1374, § 3.

CHAPTER 19

FERTILIZERS, LIMING MATERIALS, AND SOIL AMENDMENT

SUBCHAPTER.

- 1. GENERAL PROVISIONS. [RESERVED.]
- 2. FERTILIZERS.
- 3. LIMING MATERIALS.
- 4. SOIL AMENDMENT.
- 5. NATURAL ORGANIC FERTILIZERS.

SUBCHAPTER 1 — GENERAL PROVISIONS

[Reserved]

SUBCHAPTER 2 — FERTILIZERS

SECTION.

- 2-19-201. Penalty.
- 2-19-202. Registration required for fertilizer brands and materials — Licensing required for

SECTION.

- fertilizer blending and storage facilities.
- 2-19-203. Sale of unregistered fertilizer.
- 2-19-204. Exempted transactions.

SECTION.

- 2-19-205. Statement required on each container.
- 2-19-206. Penalty for deficiency from guaranteed analysis.
- 2-19-207. Sampling fertilizers.
- 2-19-208. Analysis of fertilizers.

SECTION.

- 2-19-209. Monthly tonnage reports.
- 2-19-210. Rules and regulations.
- 2-19-211. Use of penalties from fertilizer tonnage fees.
- 2-19-212. Local legislation preemption.

Cross References. Pipeline companies transporting ammonia and other substances composing fertilizer or its manufacture, § 23-15-105.

A.C.R.C. Notes. "References to "this subchapter" in §§ 2-19-101 — 2-19-210 may not apply to § 2-19-211 which was enacted subsequently.

Effective Dates. Acts 1953, No. 221, § 3: approved Mar. 5, 1953. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that the distribution of anhydrous ammonia and other fertilizers sold in bulk to the farmers of this state is being seriously hampered and that only the provisions of this act will alleviate this situation. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health and safety shall take effect and be in full force from and after its passage."

Acts 1981, No. 398, § 3: July 1, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that the soils testing and research programs and facilities of the University of Arkansas have made substantial contributions to the agricultural and livestock industries in this state through information derived through research and testing that has led to improved uses of fertilizers and improved formulation of fertilizers used in crop and plant production; that the existing soils testing facilities and funds avail-

able for soils testing and research are not adequate to meet the agricultural and livestock needs of this state, and that the immediate passage of this act is necessary to enable the State Plant Board to collect sufficient fees from the inspection of fertilizer to provide the funds for the efficient and necessary operation of the plant board and the horticulture and soils testing and research facilities of the University of Arkansas, to provide the funds essential for the operation of existing programs and continued progress in the use of fertilizers in crop and plant production in this state, and that the immediate passage of this act is necessary to enable the plant board to collect said fees for the purposes set forth in this act. Therefore, an emergency is hereby declared to exist and this act, being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after July 1, 1981."

Acts 1993, No. 783, § 13: Mar. 29, 1993. Emergency clause provided: "It is hereby found and determined by the Seventy-Ninth General Assembly meeting in Regular Session that the provisions of this act are of critical importance to the state's ability to continue the duties, responsibilities, and functions of the State Plant Board. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

RESEARCH REFERENCES

A.L.R. Products liability for fertilizers, insecticides, pesticides, fungicides, weed killers, or articles used in application thereof. 12 A.L.R.4th 462.

Am. Jur. 3 Am. Jur. 2d, Agri., § 57.
C.J.S. 3 C.J.S., Agri., § 74 et seq.

2-19-201. Penalty.

(a) Any person selling or offering for sale any fertilizer or fertilizer material in violation of a provision of this subchapter, of a regulation made under this subchapter, or of a notice issued under the authority of this subchapter shall be guilty of a violation.

(b) Upon conviction, an offender shall be fined in any sum not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500).

History. Acts 1951, No. 106, § 10; A.S.A. 1947, § 77-714; Acts 2005, No. 1994, § 11.

Amendments. The 2005 amendment substituted "violation" for "misdemeanor" in (a).

2-19-202. Registration required for fertilizer brands and materials — Licensing required for fertilizer blending and storage facilities.

(a)(1) All manufacturers, jobbers, and manipulators of commercial fertilizers and of fertilizer materials to be used in the manufacture of fertilizer, who may desire to sell or offer for sale in Arkansas fertilizer and fertilizer materials, shall first file for registration with the State Plant Board, upon forms furnished by the board. The forms shall include the name of the brand of each fertilizer, fertilizer materials, or chemicals which they may desire to sell in the state, either by themselves or their agents, together with the names and addresses of the manufacturers or manipulators, and such other information as may be required by the board in its regulations.

(2) A registrant shall not be required to register each grade of fertilizer that is formulated but shall report the mixed formulations on a monthly basis as required by § 2-19-209.

(3) All registrations must be approved by the board or its authorized agent before being effective.

(4) Registrations may be cancelled by the board for repeated flagrant violations of this subchapter, after notice and a hearing.

(5)(A) Each commercial fertilizer registrant shall report the guaranteed analysis by net weight of each registered fertilizer brand and the name and address of the registrant.

(B) Except for specialty fertilizers as defined in subdivision (d)(2) of this section, no guaranteed analysis of complete fertilizer shall be allowed indicating fractional units of primary plant food.

(C) Raw materials may be registered under a guarantee of the actual plant food content.

(D) In the case of bone meal, the phosphoric acid content shall be stated as a total, and its actual nitrogen content shall be stated.

(E) In the case of rock phosphate, both the total and available phosphoric acid content shall be stated.

(b)(1) All manufacturers, jobbers, blenders, and manipulators of commercial fertilizers and of fertilizer materials to be used in the manufacture of fertilizer, who may desire to sell or offer for sale in

Arkansas fertilizer or fertilizer materials, shall first obtain a facility license from the board for each fertilizer blending or bulk storage facility which they operate.

(2) After notice and hearing, the board shall, by regulation, promulgate the standards and criteria which it determines are necessary to license fertilizer blending or bulk storage facilities.

(c)(1)(A) The board may, under its regulations, set and collect reasonable fertilizer brand registration and facility licensing fees.

(B) The fees shall be deposited in the Plant Board Fund of the State Treasury.

(2) All registrations shall expire on June 30 of each year.

(d) Any commercial fertilizer sold must contain a minimum of twenty (20) units of primary plant food, except for the following exemptions for special agricultural crop fertilizer formulations and for specialty fertilizers:

(1) Commercial fertilizers which are needed in special cases for special agricultural crop uses shall be permitted to be sold in less than the combined twenty-unit minimum of primary plant food elements. The special agricultural crop-use fertilizers with less than the twenty-unit minimum shall be permitted for sale only after the fertilizer grade is registered with the board. In order to register the fertilizer grade, the applicant shall submit a written justification which shall show the need for such special fertilizer grade and shall include the fertilizer materials to be used in the special agricultural crop fertilizer formulation. The board or its designee shall evaluate the formulation based on criteria established by rules and regulations of the board.

(2) A "specialty fertilizer" is any fertilizer distributed primarily for nonfarm use, such as for home gardens, lawns, shrubs, flowers, golf courses, municipal parks, cemeteries, greenhouses, and nurseries. It may include fertilizers used for research or experimental purposes.

History. Acts 1951, No. 106, § 1; 1957, 1947, § 77-701; Acts 1991, No. 189, § 1; No. 356, § 1; 1981, No. 398, § 1; A.S.A. 1993, No. 352, § 1; 1993, No. 373, § 1.

CASE NOTES

Nonresident Seller.

Where an agent of nonresident seller came into Arkansas and solicited the buyer to buy fertilizer from his or her company and the parties entered into a written contract in Arkansas, subject to the approval of the seller's home office, there was an actual proffer of sale within

the state to a particular person in the state that constituted an "offer for sale within the state" of fertilizers within the meaning of former similar law. *Empire Carbon Works v. J.C. Barker & Co.*, 132 Ark. 1, 199 S.W. 929 (1917) (decision under prior law).

2-19-203. Sale of unregistered fertilizer.

(a) It shall be unlawful for any manufacturer, individual, corporation, or company, either by themselves or agents, to sell or offer for sale in this state any fertilizer brand or fertilizer materials that have not

been registered with and the registration approved by the State Plant Board or its authorized representative, as required by this subchapter.

(b) The fact that the purchaser waives the inspection and analysis thereof shall be no protection to the party selling or offering for sale fertilizer brands or fertilizer materials.

(c) It shall be unlawful for any manufacturers, jobbers, blenders, and manipulators of commercial fertilizers and of fertilizer materials, whether an individual, corporation, or company, either by themselves or by their agents, to sell or offer for sale in this state any fertilizer brand or fertilizer materials that were manufactured at an unlicensed fertilizer blending or bulk storage facility, as required by this subchapter.

History. Acts 1951, No. 106, § 5; A.S.A. 1947, § 77-708; Acts 1991, No. 189, § 2.

2-19-204. Exempted transactions.

Nothing in this subchapter shall be construed to restrict or prohibit sales of superphosphates or any other fertilizer materials to one another by importers, manufacturers, or manipulators who mix materials for sale, or prevent the free and unrestricted shipments of materials to manufacturers who have registered their brands, as required by this subchapter.

History. Acts 1951, No. 106, § 9; A.S.A. 1947, § 77-712.

2-19-205. Statement required on each container.

(a) Before selling or offering for sale in this state complete fertilizer or fertilizer materials, all persons, companies, manufacturers, dealers, or agents shall brand, print, or attach to each bag or other container:

(1) A true statement giving the name and address of the manufacturer or guarantor;

(2) The net weight of the package or other container, in pounds;

(3) The brand name or trademark;

(4) The guaranteed analysis: nitrogen%, phosphoric acid, available%, potash soluble in distilled water%; and

(5) Such other information as the State Plant Board may require in its regulations.

(b) This information shall be given in the invoice rather than on the container for sales of anhydrous ammonia and other fertilizers in bulk.

(c) All the provisions of this subchapter which apply to statements or guarantees appearing on containers shall apply equally to information contained in the invoice.

History. Acts 1951, No. 106, § 2; 1953, No. 221, § 1; A.S.A. 1947, § 77-702.

CASE NOTES

Validity of Note.

In an action on a promissory note given for the purchase of a commercial fertilizer for an agreed price, it was a good defense that the sale of the fertilizer was made in this state and that the fertilizer had never

been analyzed by the Commissioner of Mines, Manufactures, and Agriculture (now State Plant Board) nor tags affixed to the bags as required by the law. *Florence Cotton Oil Co. v. Anglin*, 105 Ark. 672, 152 S.W. 295 (1912) (decision under prior law).

2-19-206. Penalty for deficiency from guaranteed analysis.

(a)(1) If any commercial fertilizer or fertilizer material offered for sale in this state shall, upon official analysis, prove deficient from its guarantee as stated on the bag or other container, to the extent of three percent (3%) and not over five percent (5%), then the manufacturer of the commercial fertilizer or fertilizer materials or his or her agent shall be liable for the actual deficiency as shown by the official analysis.

(2) If the deficiency is over five percent (5%), then the penalty will be three (3) times the amount of the total deficiency as found by the official analysis.

(3) The penalty shall apply only to the shipment sampled.

(4) In its regulations, the State Plant Board may set up penalties for any guaranteed constituents found deficient beyond a reasonable tolerance.

(b)(1) Penalties assessed under this section and under such regulations as may be enacted under it, except those exceeding the actual value of the shortages found, shall be paid to the consumer of the lot of deficient fertilizer within thirty (30) days after the date of notice from the board to the manufacturer or agent, receipts to be taken and promptly forwarded to the board.

(2) The value of the deficiencies, if any, exceeding the actual shortages, and the actual value of the shortages when the consumer cannot be found, shall be paid to the board within forty-five (45) days after the date of notice from the board to the manufacturer or his or her agent and shall be deposited in the Feed and Fertilizer Fund of the State Treasury.

(c)(1) The board shall ascertain the market value of the materials from the manufacturers of fertilizer and fertilizer materials specified in this subchapter to be used in the manufacture of fertilizer and fertilizer materials and from other reliable sources. This determination shall be done to fix units of value on them to be used in determining the amount of damages due when the official analysis shows a deficiency from the guaranteed analysis as specified in this subchapter.

(2) The board is authorized to cancel the present registration or refuse to register for the next season any fertilizer or fertilizer materials offered for sale by any manufacturer, jobber, or manipulator who fails or refuses to comply with this section.

History. Acts 1951, No. 106, § 3; 1957, No. 356, § 2; A.S.A. 1947, § 77-703.

CASE NOTES

Recovery by Seller.

In action on notes taken in payment for fertilizer, the seller was entitled to recover if the jury found that the fertilizer contained the ingredients named in the per-

cent stated on the tags attached to the sacks or if there was no greater deficiency than three percent. *Warren Cotton Oil & Mfg. Co. v. Gorman*, 123 Ark. 279, 185 S.W. 433 (1916) (decision under prior law).

2-19-207. Sampling fertilizers.

The inspectors for the State Plant Board shall obtain samples of fertilizer or fertilizer materials in the following manner:

(1) They shall draw samples with a core instrument that shall not be less than twelve inches (12") in length in a manner that will procure a representative sample from such shipments of fertilizer or fertilizer materials as they may be directed by the board or that they may find uninspected;

(2) Where there are ten (10) packages or less, they shall take samples from every package; where there are ten (10) or more packages, they shall take samples from ten (10) packages, plus a sample for each additional ton. In no case do more than twenty (20) packages need to be sampled;

(3) After thoroughly mixing the samples so drawn, they shall fill a container to be approved by the board with a portion of the mixed sample for chemical analysis or inspection; and

(4) Accompanying these samples, a report shall be made giving the name of the commodity inspected, number of packages represented by sample, the name of the manufacturer, the guaranteed analysis, the place where inspected, the date of inspection, and the name of the inspector.

History. Acts 1951, No. 106, § 6; A.S.A. 1947, § 77-709.

2-19-208. Analysis of fertilizers.

(a)(1) Samples of fertilizer or fertilizer materials obtained by the inspectors shall be delivered to the State Plant Board which shall deliver the samples to the chief department chemist who shall make or cause to be made a complete analysis thereof.

(2) Analyses are to be made according to methods adopted by the Association of Official Agricultural Chemists.

(b)(1) He or she shall file his or her analysis with the board, and it shall be recorded as official.

(2) The official analysis of fertilizer or fertilizer materials under the seal of the board shall be deemed prima facie evidence in any court of this state on the trial of any issue involved on the merits of the fertilizer or fertilizer materials represented by the sample.

- (3) Three (3) copies of the official analysis shall be made:
- (A) One (1) shall be sent:
 - (i) To the manufacturer;
 - (ii) To the purchaser; and
 - (B) One (1) kept on file in the office of the board.

History. Acts 1951, No. 106, § 7; A.S.A. 1947, § 77-710.

RESEARCH REFERENCES

Ark. L. Rev. Documentary Evidence — Arkansas, 15 Ark. L. Rev. 79.

2-19-209. Monthly tonnage reports.

(a)(1)(A) All manufacturers and manipulators or agents representing them who have registered their brands in compliance with § 2-19-202 shall forward to the State Plant Board each month a report which shall reach its office on or before the twentieth day of the month, on the forms and in the number of copies to be prescribed by the State Plant Board.

(B) The report shall include a sworn statement of the total tonnage of all commercial fertilizers and fertilizer materials shipped or caused to be shipped for sale or consumption in this state, or which have been made, mixed, manufactured, or compounded in this state for sale or consumption in this state.

(2)(A)(i) The report shall be accompanied with the sum of one dollar and twenty cents (\$1.20) per ton or fractional ton.

(ii) A fee of one dollar and twenty cents (\$1.20) will accompany each monthly report of tonnage which amounts to less than one (1) ton.

(B) The State Plant Board shall issue receipt for the amount received and shall deposit the sums received as follows:

(i) Thirty-one cents (31¢) of the one dollar and twenty cent (\$1.20) fee per ton or fractional ton inspected shall be deposited with the Treasurer of State as special revenues and shall be credited to the Plant Board Fund to be used for the maintenance, operation, support, and improvement of the board; and

(ii)(a) Eighty-nine cents (89¢) of the one dollar and twenty cent (\$1.20) fee per ton or fractional ton inspected shall be remitted to the Board of Trustees of the University of Arkansas and shall be credited to a fund to be known as the "University of Arkansas Soil Testing and Research Fund" to be maintained in accounts in one (1) or more financial institutions in the State of Arkansas. This amount shall be expended exclusively for soil testing service and soil fertility research by the Board of Trustees of the University of Arkansas under appropriations made by the General Assembly. It shall be expended in support of one (1) or more soil testing laboratories and soil fertility research activities at the main experiment station, branch experi-

ment stations, or subbranch experiment stations, as determined and designated by the Vice President of Agriculture of the University of Arkansas.

(b)(1) The Board of Trustees of the University of Arkansas shall provide for the investment of any funds in the University of Arkansas Soil Testing and Research Fund that are not needed for current operations of the soil testing laboratories and soil fertility service and research activities and shall credit the interest earned on that investment to the credit of the University of Arkansas Soil Testing and Research Fund.

(2) The investment shall be of the type and nature authorized for the investment of average daily State Treasury balances by the State Board of Finance.

(b)(1) The State Plant Board or its agents shall have the right, at any time, to inspect or audit the books of any manufacturer and manipulator, or their agents, to determine the correctness of the monthly reports required under this section.

(2) Refusal to allow this inspection or audit shall be deemed a violation of this subchapter, and the violator shall be subject to the penalties provided in this subchapter.

(3) For a late report or for failure to report the entire amount sold, the tonnage fee on the late reported or unreported amount shall be enhanced by ten percent (10%) if less than fifteen (15) days late, twenty percent (20%) if less than thirty-one (31) days late, and doubled if more than thirty (30) days late. Penalties shall be deposited in the Plant Board Fund; otherwise, registrations may be cancelled by the State Plant Board.

History. Acts 1951, No. 106, § 4; 1953, 398, § 2; A.S.A. 1947, § 77-707; Acts No. 301, § 1; 1957, No. 356, § 3; 1981, No. 1993, No. 783, § 1; 1999, No. 766, § 1.

2-19-210. Rules and regulations.

(a) The State Plant Board shall have authority to establish rules and regulations in regard to the enforcement of this subchapter and in regard to inspection, analysis, and sale of fertilizer or fertilizer materials that shall not be inconsistent with the provisions of this subchapter.

(b) The board or its authorized representatives shall have authority to stop the sale of any fertilizer or fertilizer material when the sale is found in violation of this subchapter, or of the regulations of the board made in accordance with this subchapter, or when it has reason to suspect that the sale is in violation of this subchapter or of the board's regulations.

History. Acts 1951, No. 106, § 8; A.S.A. 1947, § 77-711.

2-19-211. Use of penalties from fertilizer tonnage fees.

All penalties received by the State Plant Board for failure to pay or report fertilizer tonnage fees shall be remitted to the Board of Trustees of the University of Arkansas, to be credited to the University of Arkansas Soil Testing and Research Fund in the same manner as prescribed by § 2-19-209 and to be used for the same purposes as described in § 2-19-209.

History. Acts 1999, No. 989, § 1.

may not apply to this section, which was

A.C.R.C. Notes. References to "this subchapter" in §§ 2-19-201 — 2-19-210

enacted subsequently.

2-19-212. Local legislation preemption.

(a) As used in this section:

(1) "Local legislation" means any ordinance, motion, resolution, amendment, regulation, or rule adopted by a political subdivision of this state; and

(2) "Political subdivision" means any local governmental entity including without limitation, any city, county, township, or municipal corporation and any other body corporate and politic that is responsible for government activities in a geographical area smaller than that of the state.

(b) No political subdivision shall:

(1) Regulate the registration, packaging, labeling, sale, storage, distribution, use, or application of fertilizers; or

(2) Adopt or continue in effect local legislation relating to the registration, packaging, labeling, sale, storage, distribution, use, or application of fertilizers.

(c) Local legislation in violation of this section is void and unenforceable.

History. Acts 2007, No. 678, § 1.

SUBCHAPTER 3 — LIMING MATERIALS

SECTION.

2-19-301. Title.

2-19-302. Penalty.

2-19-303. Labeling requirements.

2-19-304. Sampling and analysis.

2-19-305. Penalty for deficiency from guaranteed analysis.

SECTION.

2-19-306. Registration and vendor's license.

2-19-307. Quarterly tonnage reports.

2-19-308. Rules and regulations.

Effective Dates. Acts 1969, No. 353, § 11: July 1, 1969.

Acts 1983, No. 724, § 4: July 1, 1983.
Emergency clause provided: "It is hereby found and determined by the General As-

sembly of the State of Arkansas that the soils testing research and extension programs and services of the University of Arkansas have made substantial contributions to the agricultural and livestock

industries in this state through information derived through research and extension that has led to improved uses of lime and improved formulation and application of lime in crop and plant production; that the existing soil testing services and funds available for soil testing research and extension are not adequate to meet the agricultural and livestock needs of this state, and that the immediate passage of this act is necessary to enable the State Plant Board to collect sufficient fees from the inspection of lime to provide the funds for the efficient and necessary operation of the plant board and soil testing research and extension services of the University of Arkansas, to provide the funds essential for the operation of existing programs and continued progress in the use of lime in crop and plant production in this state, and that the immediate passage of this act is necessary to enable the plant board to

collect said fees for the purposes set forth in this act. Therefore, an emergency is hereby declared to exist and this act, being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1983."

Acts 1993, No. 783, § 13: Mar. 29, 1993. Emergency clause provided: "It is hereby found and determined by the Seventy-Ninth General Assembly meeting in Regular Session that the provisions of this act are of critical importance to the state's ability to continue the duties, responsibilities, and functions of the State Plant Board. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

2-19-301. Title.

This subchapter shall be known as the "Arkansas Agricultural Liming Materials Act".

History. Acts 1969, No. 353, § 1; A.S.A. 1947, § 77-1901.

2-19-302. Penalty.

Any person who shall violate any provision of this subchapter or any regulation adopted under this subchapter shall upon conviction be guilty of a violation and fined not less than one hundred dollars (\$100) for the first offense and not less than three hundred dollars (\$300) for every subsequent offense.

History. Acts 1969, No. 353, § 8; A.S.A. 1947, § 77-1908; Acts 2005, No. 1994, § 12.

Amendments. The 2005 amendment inserted "guilty of a violation and."

2-19-303. Labeling requirements.

(a) As used in this subchapter, unless the context otherwise requires, "liming material" means all or any form of limestone, lime rock, dolomite, marl, slag, by-product lime, brown lime, industry or factory refuse lime, and any other material moved, prepared, sold, or distributed primarily for correcting soil acidity.

(b) Every lot, package, or parcel of liming material sold or offered or exposed for sale or distribution within this state shall have on each bag, package, or other container in a conspicuous place on the outside; or in

the case of bulk lime, there shall accompany each load and the vendor shall present to the purchaser a legible and true statement in the English language giving:

(1) The net weight of the contents of the package, bag, other container, or bulk load;

(2) The true name of the product;

(3) The name and principal address of the manufacturer, importer, or other guarantor;

(4) The minimum neutralizing value in terms of percent of calcium carbonate equivalent;

(5) The degree of fineness expressed as:

(A) Minimum percentage passing through a ten (10) mesh sieve;

(B) Minimum percentage passing through a sixty (60) mesh sieve; and

(C) Minimum percentage passing through a one hundred (100) mesh sieve; and

(6) Any other statements that the State Plant Board in its regulations may require.

(c) In lieu of subdivisions (b)(4) and (5) of this section, the board may in its regulations set minimum standards of calcium carbonate equivalence and fineness for various grades of liming materials. These grades when stated shall become the minimum guarantees of the liming material so labeled.

History. Acts 1969, No. 353, § 2; A.S.A. 1947, § 77-1902.

2-19-304. Sampling and analysis.

(a) The State Plant Board through its authorized agents is authorized to select from any package, bulk load, or lot of liming material exposed for sale or distribution in this state a quantity not less than two pounds (2 lbs.) for a sample, to be used for the purpose of an official analysis for comparison with the statement required by § 2-19-303 or the regulations provided for therein.

(b) The board and its authorized agents shall have free access during reasonable business hours to all premises where liming materials are manufactured, sold, or stored, and vehicles wherein distributed, and are authorized at all times to stop-sale by written order any and all liming materials that are unregistered, misbranded, fail to meet the guarantee, or otherwise fail to comply with the provisions of this subchapter.

History. Acts 1969, No. 353, § 5; A.S.A. 1947, § 77-1905.

2-19-305. Penalty for deficiency from guaranteed analysis.

(a) If any liming material offered for sale in this state shall, upon official analysis, prove deficient from its statement of guarantee to the extent of five percent (5%) or more, then the manufacturer, importer, or guarantor of the liming material shall be liable for two (2) times the value of the actual deficiency as shown by the official analysis.

(b)(1) Penalties assessed under this section, except those exceeding the actual value of the shortages found, shall be paid to the consumer of the lot of deficient liming material within thirty (30) days after the date of notice from the State Plant Board to the manufacturer, importer, or guarantor, receipts to be taken and promptly forwarded to the board.

(2) The value of the deficiencies exceeding the actual shortages and the actual value of the shortages when the consumer cannot be found shall be paid to the board within forty-five (45) days after the date of notice from the board to the manufacturer, importer, or guarantor and shall be deposited in the Plant Board Fund of the State Treasury.

(c) The board is authorized to cancel the present registration or to refuse to register for the next season any liming materials offered for sale or distribution by any manufacturer, importer, or guarantor who fails or refuses to comply with this section.

History. Acts 1969, No. 353, § 6; A.S.A. 1947, § 77-1906.

2-19-306. Registration and vendor's license.

(a) **REGISTRATION.**

(1) Before any liming material is sold or offered for sale or distribution in this state, the manufacturer, importer, or other guarantor, which is a person or firm who places or mixes liming materials of more than one (1) manufacturer in a stockpile, shall register each such liming material with the State Plant Board.

(2) The registration shall contain the statement referred to in § 2-19-303 or the regulations provided for therein and be accompanied by a fee of fifteen dollars (\$15.00) for each liming material.

(3) Registrations shall expire June 30 of each year.

(b) **VENDOR'S LICENSE.**

(1) It shall be unlawful for any person or firm to engage in the spreading of liming material on properties belonging to others unless application for a license shall be in the form prescribed by the board. The form shall state the name and address of the applicant and total number of spreader trucks or other similar vehicles to be used by the applicant.

(2) The application shall be accompanied by a fee of fifteen dollars (\$15.00) for the license plus a fee of three dollars (\$3.00) for each spreader truck or similar vehicle.

(3) Licenses shall expire June 30 of each year.

History. Acts 1969, No. 353, § 3; 1983, No. 724, § 1; A.S.A. 1947, § 77-1903.

2-19-307. Quarterly tonnage reports.

(a)(1)(A)(i) All manufacturers, importers, and other guarantors who are registered pursuant to § 2-19-306(a) shall forward to the State Plant Board each quarter a report on forms prescribed by the State Plant Board, not later than thirty (30) days after the end of each quarter.

(ii) Quarters shall end September 30, December 31, March 31, and June 30 of each year.

(B) The report shall include a sworn statement of the total tonnage of all liming materials distributed in this state and shall be accompanied by the sum of thirty cents (30¢) per ton or fractional ton.

(2) A fee of thirty cents (30¢) will accompany each quarterly report of tonnage which amounts to less than one (1) ton.

(3)(A) When sales or distributions of liming materials are between registrants, the registrant who sells or distributes to a person or firm who is not a registrant shall be responsible for payment of the inspection fee unless the payment is made by the registrant initiating the transaction.

(B) Invoices of transactions between registrants shall be marked "inspection fee paid" or "inspection fee not paid"; otherwise, the registrant initiating the transaction shall be responsible for the inspection fee.

(C) The State Plant Board shall issue receipts for the amounts received and shall deposit the sums received as follows:

(i) Twenty cents (20¢) of the thirty cent (30¢) fee per ton or fractional ton inspected shall be deposited with the Treasurer of State as special revenues. It shall be credited to the State Plant Board to be used for its maintenance, operation, support, and improvement; and

(ii)(a) Ten cents (10¢) of the thirty cent (30¢) fee per ton or fractional ton inspected shall be remitted to the Board of Trustees of the University of Arkansas. This amount shall be credited to a fund to be known as the "University of Arkansas Soil Testing and Research Fund" to be maintained in accounts in one (1) or more financial institutions in the State of Arkansas. This amount shall be expended exclusively for soil testing service and soil fertility research and extension by the Board of Trustees of the University of Arkansas under appropriations made by the General Assembly. It shall be expended in support of one (1) or more soil testing laboratories and soil fertility research activities at the main experiment stations, branch experiment stations, or subbranch experiment stations, as determined and designated by the Vice President of Agriculture of the University of Arkansas.

(b)(1) The Board of Trustees of the University of Arkansas shall provide for the investment of any funds in the University of Arkansas Soil Testing and Research Fund that are not needed for current

operations of the soil testing laboratories and soil fertility service and research and extension activities and shall credit the interest earned on the investment to the credit of the University of Arkansas Soil Testing and Research Fund.

(2) The investment shall be of the type and nature authorized for the investment of average daily State Treasury balances by the State Board of Finance.

(b)(1) The State Plant Board or its agents shall have the right at any time to inspect or audit the books of any manufacturer and manipulator or their agents to determine the correctness of the monthly reports required under this section.

(2) Refusal to allow this inspection or audit shall be deemed a violation of this subchapter, and the violator shall be subject to the penalties provided in it.

(3) For a late report or for failure to report the entire amount sold, the tonnage fee on the late report or unreported amount shall be doubled, and penalties shall be deposited in the State Plant Board Fund; otherwise, registrations may be cancelled by the State Plant Board.

History. Acts 1969, No. 353, § 4; 1983, No. 724, § 2; A.S.A. 1947, § 77-1904; Acts 1993, No. 783, § 2.

2-19-308. Rules and regulations.

The State Plant Board is empowered to enforce the provisions of this subchapter and to prescribe and enforce such rules and regulations relating to the sale or distribution of liming materials as may be deemed necessary to carry into effect the full intent and meaning of this subchapter.

History. Acts 1969, No. 353, § 7; A.S.A. 1947, § 77-1907.

SUBCHAPTER 4 — SOIL AMENDMENT

- SECTION.
- 2-19-401. Title.
 - 2-19-402. Definitions.
 - 2-19-403. Penalty.
 - 2-19-404. Administration.
 - 2-19-405. Inspection authorized.
 - 2-19-406. Rules and regulations.
 - 2-19-407. Labeling requirements and approval of ingredients.
 - 2-19-408. Registration of products.

- SECTION.
- 2-19-409. Denial or revocation of registration.
 - 2-19-410. Inspection fee and sales reports.
 - 2-19-411. Prohibited acts.
 - 2-19-412. Stop-sale, use, or removal orders.
 - 2-19-413. Injunctions.
 - 2-19-414. Deposit of moneys.

Effective Dates. Acts 1977, No. 377, § 15; Mar. 8, 1977. Emergency clause provided: "It is hereby found and determined by the General Assembly of Arkansas that

the introduction of certain substances into the soil of this state endangers the soil of Arkansas, and poses a severe threat to the health, safety and welfare of the people of Arkansas. Therefore, an emergency is de-

clared to exist, and this act being necessary for the preservation of the public peace, health and safety shall take effect and be in force from the date of its approval."

2-19-401. Title.

This subchapter shall be known as the "Soil Amendment Act of 1977".

History. Acts 1977, No. 377, § 1; A.S.A. 1947, § 77-2101.

2-19-402. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Soil amendment" means and includes any substance which is intended to improve the physical, chemical, or other characteristics of the soil or improve crop production, except the following:

(A) Commercial fertilizers, unless represented to contain as an active ingredient a substance other than a recognized plant food element or represented as promoting plant growth by other than supplying a recognized plant food element;

(B) Agricultural liming materials;

(C) Agricultural gypsum;

(D) Unmanipulated animal manures;

(E) Topsoil;

(F) Unmanipulated vegetable manures;

(G) Pesticides; and

(H) Herbicides;

(2) "Name" means the specific designation under which the individual product is offered for sale;

(3) "Bulk" means in nonpackaged form;

(4) "Distribute" means to import, consign, offer for sale, sell, barter, or to otherwise supply soil amendments to any person in this state;

(5) "Distributor" means any person who imports, consigns, sells, offers for sale, barter, or otherwise supplies soil amendments in this state;

(6) "Manufacturer" means any person who produces, compounds, mixes, or blends soil amendments;

(7) "Label" means the display of written, printed, or graphic matter upon the immediate container of a soil amendment;

(8) "Labeling" means all written, printed, or graphic matter upon or accompanying any soil amendment and all advertisements, brochures, posters, or television or radio announcements used in promoting the sale of a soil amendment;

(9) "Board" means the State Plant Board;

(10) "Active ingredient" means the ingredient or ingredients which are claimed to have beneficial effects on soil or crops growing on soils;

(11) "Inert ingredient" means the ingredients which do not have any beneficial or harmful effects on soil or crops but are present in the product;

(12) "Person" means individuals, partnerships, associations, and corporations;

(13) "Percent" or "percentage" means by weight;

(14) "Registrant" means any person who registers a soil amendment under the provisions of this subchapter;

(15) "Misbranded" means and shall apply if:

(A) Any soil amendment bears a label that is false or misleading in any particular;

(B) Any soil amendment is distributed under the name of another soil amendment;

(C) Any material is represented as a soil amendment or is represented as containing a soil amendment, unless the soil amendment conforms to the definition of identity, if any, prescribed by regulation;

(D) The percentage of active ingredient in any soil amendment is not shown in the approved ingredient form; or

(E) The labeling on any soil amendment is false or misleading in any particular; and

(16) "Adulterated" means and shall apply to any soil amendment if:

(A) It contains any deleterious or harmful agent in sufficient amount to render it injurious to beneficial plants, animals, or aquatic life when applied in accordance with the directions for use shown on the label; or if adequate warning statements and directions for use which may be necessary to protect plants, animals, or aquatic life are not shown on the label;

(B) Its composition falls below that which it is purported to possess by its labeling; or

(C) It contains noxious weed seed, harmful insects, or harmful disease organisms.

History. Acts 1977, No. 377, § 3; A.S.A. 1947, § 77-2103.

2-19-403. Penalty.

Any person convicted of violation of any provision of this subchapter or the rules and regulations promulgated under this subchapter shall be guilty of a misdemeanor.

History. Acts 1977, No. 377, § 12; A.S.A. 1947, § 77-2112.

2-19-404. Administration.

This subchapter shall be administered by the State Plant Board.

History. Acts 1977, No. 377, § 2; A.S.A. 1947, § 77-2102.

2-19-405. Inspection authorized.

(a) The authorized agents of the State Plant Board may inspect, sample, analyze, and test soil amendments distributed in this state at any time and place and to such extent as may be deemed necessary to determine whether soil amendments are in compliance with this subchapter.

(b) The board and its employees or agents are authorized to enter upon public or private property during regular working hours in order to have access to soil amendments for the purpose of administering this subchapter.

History. Acts 1977, No. 377, § 9; A.S.A. 1947, § 77-2109.

2-19-406. Rules and regulations.

The State Plant Board is authorized to adopt such rules and regulations as may be necessary to administer this subchapter, including methods of sampling, methods of analysis, and designation of ingredient forms, and to promulgate definitions of identity of products.

History. Acts 1977, No. 377, § 10; A.S.A. 1947, § 77-2110.

2-19-407. Labeling requirements and approval of ingredients.

(a) Each container of a soil amendment shall be labeled on the face or display side in a readable and conspicuous form to show the following information:

- (1) The net weight of the contents;
- (2) The name of the product;
- (3) The guaranteed analysis, including the name and the percentage of each active ingredient and the percentage of inert ingredients;
- (4) A statement as to the purpose of the product;
- (5) Adequate directions for use such as application rates, cultural practices, and plants to be benefited; and
- (6) The name and address of the registrant.

(b) Bulk lots shall be labeled by attaching a copy of the label to the invoice which shall be furnished the purchaser.

(c)(1)(A) The State Plant Board may require proof of claims made for any soil amendment.

(B) If no claims are made, the board may require proof of usefulness and value of the soil amendment.

(2)(A) For evidence of proof, the board will rely on experimental data, evaluations, or advice supplied from such sources as the University of Arkansas Agricultural Experiment Station and Cooperative Extension Service.

(B) All experimental results shall be related to Arkansas conditions for which the product is intended.

(C) The board may accept or reject other sources of proof as additional evidence in evaluating soil amendments.

(d)(1)(A) No soil-amending ingredient may be listed or guaranteed on the labels or labeling of soil amendments without board approval.

(B)(i) The board may allow a soil-amending ingredient to be listed or guaranteed on the label or labeling if satisfactory supportive data is provided the board to substantiate the value and usefulness of the soil-amending ingredient.

(ii) When a soil-amending ingredient is permitted to be listed or guaranteed, it must be determinable by laboratory methods and is subject to inspection and analysis.

(2) The board may prescribe methods and procedures of inspection and analysis of the soil-amending ingredient.

(3) The board may stipulate, by regulation, the quantities of the soil-amending ingredients required in soil amendments.

History. Acts 1977, No. 377, § 4; A.S.A. 1947, § 77-2104.

2-19-408. Registration of products.

(a)(1) Each soil amendment product shall be registered with the board before it is distributed in this state.

(2) Application for registration shall be submitted to the State Plant Board on a form prepared for that purpose showing the information required on the label, as provided in § 2-19-407, except net weight of product.

(b) The registration fee shall be set by the board for each product.

(c) All registrations shall expire on June 30 of the year for which the soil amendment product is registered.

(d) With the application for registration, the applicant shall submit a copy of the label and a copy of all advertisements, brochures, posters, and television and radio announcements to be used in promoting the sale of the soil amendment.

History. Acts 1977, No. 377, § 5; A.S.A. 1947, § 77-2105.

2-19-409. Denial or revocation of registration.

(a) The State Plant Board shall refuse to register any product that does not comply with this subchapter and the rules and regulations promulgated under it.

(b)(1) The board is also authorized and empowered to revoke any registration upon satisfactory evidence that the registrant or any of his or her agents has used fraudulent or deceptive practices.

(2) Registration shall not be revoked until the registrant has been given an opportunity for hearing before the board or its duly authorized agent.

History. Acts 1977, No. 377, § 11;
A.S.A. 1947, § 77-2111.

2-19-410. Inspection fee and sales reports.

(a)(1) The registrant shall pay to the State Plant Board an inspection fee of thirty-seven and one-half cents (37.5¢) per ton on all products registered and sold in this state.

(2) Each registrant shall keep adequate records of sales and shall file with the board, on a monthly basis, a signed report of the tonnage distributed by county during the preceding month.

(3) The report and payment of the inspection fee shall be due on or before the twentieth day of the month.

(4) The board, after a public hearing, may change the inspection fee schedule.

(b)(1) If the report is not filed, or the report is false in any respect or the inspection fee is not paid within the thirty-day period, the board may revoke the registration.

(2) A penalty of one dollar (\$1.00) per day is assessed for each day the payment is overdue until paid.

(3) The inspection fee and the penalty shall constitute a debt and become the basis for a judgment against the registrant which may be collected by the board in any court of competent jurisdiction without prior demand.

History. Acts 1977, No. 377, § 6; A.S.A.
1947, § 77-2106.

2-19-411. Prohibited acts.

It shall be a violation of this subchapter for any person to:

(1) Distribute a soil amendment that is not registered with the State Plant Board;

(2) Distribute a soil amendment that is not labeled;

(3) Distribute a soil amendment that is misbranded;

(4) Distribute a soil amendment that is adulterated;

(5) Fail to comply with a stop-sale, use, or removal order; or

(6) Fail to pay the inspection fee.

History. Acts 1977, No. 377, § 8; A.S.A.
1947, § 77-2108.

2-19-412. Stop-sale, use, or removal orders.

(a) The State Plant Board may issue and enforce a written or printed stop-sale, use, or removal order to the owner or custodian of any lot of soil amendment to hold the lot at a designated place when the board finds the soil amendment being offered or exposed for sale is not registered, is not labeled, is misbranded, or is adulterated, until such time as the product or labeling complies with this subchapter.

(b) The soil amendment may then be released in writing by the board.

History. Acts 1977, No. 377, § 7; A.S.A. 1947, § 77-2107.

2-19-413. Injunctions.

(a) The State Plant Board is authorized to apply for, and the court is authorized to grant, a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this subchapter or any rule or regulation promulgated under it, notwithstanding the existence of other remedies at law.

(b) The injunction shall be issued without bond.

History. Acts 1977, No. 377, § 12; A.S.A. 1947, § 77-2112.

2-19-414. Deposit of moneys.

(a) The State Plant Board shall remit all moneys received by or for it under this subchapter to the Treasurer of State.

(b) Upon receipt of any remittance, the Treasurer of State shall deposit the entire amount in the State Treasury and handle the funds in the same manner as required in § 2-19-209.

History. Acts 1977, No. 377, § 13; A.S.A. 1947, § 77-2113.

SUBCHAPTER 5 — NATURAL ORGANIC FERTILIZERS

SECTION.

2-19-501. Definitions.

2-19-502. Regulation and supervision —
Fees and penalties —
Guarantee of elements.

SECTION.

2-19-503. Exemptions.

Effective Dates. Acts 1988 (4th Ex. Sess.), No. 24, § 3: July 25, 1988. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that the use of 100 percent natural organic fertilizer will make substantial contributions to the agricultural industry in the State, and enable the State Plant Board to collect addi-

tional fees to provide for the efficient and necessary operation of the State Plant Board. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

2-19-501. Definitions.

“One hundred percent (100%) natural organic fertilizer” shall be defined as and include the following:

(1) One hundred percent (100%) organic fertilizer — Materials derived from either plant or animal products containing one (1) or more elements other than carbon, hydrogen, and oxygen which are essential for plant growth;

(A) These materials may be subjected to biological degradation processes under conditions of drying, composting, enzymatic or anaerobic/aerobic bacterial action or any combination of these;

(B) These materials shall not be mixed with synthetic materials;

(2) One hundred percent (100%) natural organic fertilizer shall be processed from only one hundred percent (100%) animal substrate. No other organic or inorganic, natural or synthetic, additives shall be used during processing and no fortification may be used;

(3) One hundred percent (100%) natural organic fertilizers shall contain as a guaranteed analysis not less than: nitrogen (N), four percent (4.0%); phosphoric acid (P_2O_5), two percent (2.0%); and potash (K_2O), four percent (4.0%);

(4) Determination of the guaranteed analysis will be according to methods adopted by the Association of Official Analytical Chemists. (Fertilizers and Materials Containing Large Quantities of Organic Matter; 12th edition, With Following Improvements.).

History. Acts 1988 (4th Ex. Sess.), No. 24, § 1; 1991, No. 968, § 1.

2-19-502. Regulation and supervision — Fees and penalties — Guarantee of elements.

(a) The State Plant Board shall have the authority to regulate and supervise the manufacture and sale of one hundred percent (100%) natural organic fertilizer, including the setting and collecting of reasonable fees for sampling and analyzing the fertilizer and registering manufacturers, and shall adopt and promulgate such rules, regulations, and penalties consistent with this subchapter, and § 2-19-202, as may be necessary.

(b) The fees and penalties set and collected by the board pursuant to this section shall not exceed like fees and penalties set for other types of fertilizers.

(c) When any reference or claim is made on the label for secondary or minor plant nutrients, a specific guarantee of the specific elements contained shall be given in the guaranteed analysis.

History. Acts 1988 (4th Ex. Sess.), No. 24, § 1; 1989, No. 42, § 1; 1991, No. 968, § 2.

2-19-503. Exemptions.

This subchapter shall not affect the private sale of unprocessed animal litter, nor shall the State Plant Board regulate the private sale of unprocessed animal litter which is not sold as one hundred percent (100%) natural organic fertilizer as defined by this subchapter.

History. Acts 1988 (4th Ex. Sess.), No. 24, § 1; 1991, No. 968, § 3.

CHAPTER 20
PROCESSING, GRADING, LABELING, AND
MARKETING OF PRODUCTS

SUBCHAPTER.

- 1. GENERAL PROVISIONS.
- 2. COTTON AND COTTON GINS.
- 3. LABELING OF FRUITS AND VEGETABLES FOR INTERSTATE SHIPMENT.
- 4. SOYBEAN PROMOTION.
- 5. RICE PROMOTION.
- 6. WHEAT PROMOTION.
- 7. REGULATION OF GINSENG.
- 8. CORN AND GRAIN SORGHUM PROMOTION.

A.C.R.C. Notes. References to “this chapter” in subchapters 1-7 may not apply to subchapter 8 which was enacted subsequently.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 2-20-101. Title.
- 2-20-102. Definitions.
- 2-20-103. Penalty.
- 2-20-104. Official standards for grading.
- 2-20-105. Notice of standards.
- 2-20-106. Adoption of federal standards.
- 2-20-107. Container standards.
- 2-20-108. Unlawful sale or disposal.
- 2-20-109. Suspension or revocation of licenses.

SECTION.

- 2-20-110. Inspectors, employees, and agents.
- 2-20-111. Unlawful actions — Improper influence.
- 2-20-112. Administration.
- 2-20-113. Right of inspection.
- 2-20-114. Appeal of certification.
- 2-20-115. Certificate as evidence.
- 2-20-116. Misrepresentations.
- 2-20-117. Rule of agency.

Publisher’s Notes. With respect to certain fruits and vegetables intended for shipment outside the state, this subchapter may be superseded by § 2-20-301 et seq. governing labeling of fruits and vegetables for interstate shipment.

Cross References. Landlords or laborers lien superior to purchase of ginner’s receipt, § 18-41-107.

Effective Dates. Acts 1925, No. 218, § 20: July 1, 1925.

RESEARCH REFERENCES

Am. Jur. 3 Am. Jur. 2d, Agri., § 52 et seq. **C.J.S.** 3 C.J.S., Agri., § 5.

2-20-101. Title.

This subchapter shall be known as the “Agricultural Products Grading Act of 1925”.

History. Acts 1925, No. 218, § 1; Pope’s Dig., § 12384; A.S.A. 1947, § 77-501.

2-20-102. Definitions.

As used in this subchapter, unless the context otherwise requires:

- (1) “Board” means the State Plant Board;
- (2) “Director” means the Director of the State Plant Board;
- (3) “Agricultural products” means horticultural, viticultural, bee, and other agricultural products;
- (4) “Persons” means individuals, partnerships, corporations, associations, or two (2) or more individuals having a joint or common interest; and
- (5) “Places” means vessels, cars, and other vehicles, buildings, docks, railroad platforms, orchards, fields, and other premises where agricultural products are kept, handled, or grown.

History. Acts 1925, No. 218, § 2; Pope’s Dig., § 12385; A.S.A. 1947, § 77-502.

2-20-103. Penalty.

Any person who shall violate any provision of this subchapter shall be guilty of a Class B misdemeanor.

History. Acts 1925, No. 218, § 16; Pope’s Dig., § 12398; A.S.A. 1947, § 77-515; Acts 2005, No. 1994, § 233.

Amendments. The 2005 amendment inserted “Class B” and deleted “and upon

conviction shall be punished by a fine of not more than five hundred (\$500) or by imprisonment for not more than ninety (90) days, or by both fine and imprisonment” from the end.

2-20-104. Official standards for grading.

(a) In order to promote, protect, further, and develop the agricultural interests of this state, the State Plant Board, after investigation and public hearing, is authorized and empowered to fix and promulgate official standards for grading and classifying any or all agricultural products grown or produced in this state and to fix and promulgate official standards for containers of farm products and to change any of them from time to time.

(b) The board, in its rules, regulations, or notices promulgated pursuant to this subchapter, shall prescribe such tolerances as may be deemed necessary, permitting variations from the standards fixed under the provisions of this subchapter as are reasonably incident to the proper grading of agricultural products or to the manufacture of containers for farm products.

History. Acts 1925, No. 218, § 3; Pope's Dig., § 12386; A.S.A. 1947, § 77-503.

CASE NOTES

Cited: Stuttgart Rice Mill Co. v. Crandall, 203 Ark. 281, 157 S.W.2d 205 (1941).

2-20-105. Notice of standards.

(a) In promulgating the standards or any alterations or modifications of the standards, the State Plant Board shall specify the date when they shall become effective and shall give public notice, not less than thirty (30) days in advance of the date when the standard for any agricultural product shall become effective and one (1) year in advance of the date when the standard for any container shall become effective, by such means as the board deems proper.

(b) The Director of the State Plant Board is authorized and empowered to employ reasonable methods for diffusing information concerning the standard that may be fixed by the board for any agricultural product or container.

History. Acts 1925, No. 218, § 4; Pope's Dig., § 12387; A.S.A. 1947, § 77-504.

2-20-106. Adoption of federal standards.

(a) The State Plant Board is authorized to fix and promulgate as the official standard of this state for any agricultural product or container the standard for the product or container which may have been promulgated or announced therefor under the authority of the Congress of the United States.

(b) In carrying out the provisions of this subchapter, the Director of the State Plant Board is authorized to cooperate with the United States or any department thereof in accomplishing the matters and things provided for in this subchapter.

History. Acts 1925, No. 218, § 5; Pope's Dig., § 12388; A.S.A. 1947, § 77-505.

2-20-107. Container standards.

When any standard for a container for an agricultural product becomes effective under this subchapter, then no person shall manufacture for commerce within the jurisdiction of this state or sell, ship, or

offer for sale in commerce any container, either filled or unfilled, to which that standard is applicable when the container does not comply with the standard, subject to such tolerance as may be permitted under this subchapter.

History. Acts 1925, No. 218, § 14;
Pope's Dig., § 12396; A.S.A. 1947, § 77-513.

2-20-108. Unlawful sale or disposal.

It shall be unlawful for any person to offer for sale or to sell or otherwise dispose of any agricultural product in this state under any grade name or classification fixed for that agricultural product under the provisions of this subchapter or under any description, name, or designation which would reasonably be construed to refer to any grade name or classification fixed for that agricultural product under the provisions of this subchapter unless that agricultural product is graded or classified in conformity with the standard which may be specified for that grade or classification of the agricultural product under the provisions of this subchapter.

History. Acts 1925, No. 218, § 15;
Pope's Dig., § 12397; A.S.A. 1947, § 77-514.

2-20-109. Suspension or revocation of licenses.

(a) The Director of the State Plant Board may designate any competent inspector or other employee or agent of the State Plant Board and, upon satisfactory evidence of competency, may license any other person, and charge and collect a reasonable fee for the license, to inspect or classify agricultural products in accordance with such regulations as the board may prescribe at such places as the volume of business may be found to warrant the furnishing of inspection service, at the request of persons having an interest in products and to ascertain and certify the grade, classification, quality, or condition thereof, and such other pertinent facts as the board may require.

(b)(1) The board is authorized to fix, assess, and collect or cause to be collected fees for services when they are performed by inspectors, employees, or agents of the board.

(2) Licensed inspectors may charge and collect as compensation for services only such fees as may be approved by the board.

(c)(1) The director may suspend or revoke any license whenever, after an opportunity for hearing has been afforded to the licensee, the director shall determine that the licensee is incompetent, or has knowingly or carelessly failed to grade or classify any agricultural product in accordance with such standards, or has knowingly or carelessly failed to correctly certify the grade, classification, quality, or condition of any agricultural product, or has violated any provision of this subchapter, or of the regulations made pursuant thereto.

(2) Pending investigations, the director may suspend a licensee temporarily without a hearing.

History. Acts 1925, No. 218, § 6; Pope's Dig., § 12389; A.S.A. 1947, § 77-506. mits, removal of disqualification for criminal offenses, § 17-1-103.

Cross References. Licenses and per-

2-20-110. Inspectors, employees, and agents.

(a) The Director of the State Plant Board may appoint deputy inspectors, employees, and agents to assist in carrying out the provisions of this subchapter.

(b)(1) The director may require any employee or agent and any inspector licensed under this subchapter to be covered by a good and sufficient bond, payable to the state, conditional upon the faithful performance of each employee, agent, or licensed inspector of his or her duties as an employee, agent, or licensed inspector.

(2) Any person injured by the failure of an employee, agent, or licensed inspector faithfully to perform such duties shall be entitled to sue on the bond in his or her own name in any court of competent jurisdiction for the recovery of such damages as he or she may have sustained by reason of that failure.

History. Acts 1925, No. 218, § 10; Pope's Dig., § 12393; Acts 1985, No. 279, § 2; A.S.A. 1947, § 77-510.

2-20-111. Unlawful actions — Improper influence.

(a) It shall be unlawful for any inspector, employee, or agent employed under the provisions of this subchapter, or any inspector licensed under it, to:

(1) Knowingly inspect, grade, or classify improperly any agricultural product; or

(2) Knowingly give any incorrect certificate of grade, classification, quality, or condition; or

(3) Accept money or other consideration, directly or indirectly, for any incorrect or improper performance of duty.

(b) It shall be unlawful for any person to improperly influence or attempt to improperly influence any inspector, employee, agent, or licensed inspector in the performance of his or her duties.

History. Acts 1925, No. 218, § 11; Pope's Dig., § 12394; A.S.A. 1947, § 77-511.

2-20-112. Administration.

(a) The State Plant Board is authorized and empowered to promulgate rules, regulations, and notices for carrying out the purposes and provisions of this subchapter.

(b) All fees and moneys collected or received by inspectors, employees, or agents of the board under this subchapter and the rules and regulations which may be promulgated pursuant to it shall be deposited in a manner prescribed in § 2-16-210 and shall be used for carrying out the provisions of this subchapter.

History. Acts 1925, No. 218, § 9; Pope's Dig., § 12392; A.S.A. 1947, § 77-509.

Cross References. Deposit of fees in state treasury, § 2-16-104.

2-20-113. Right of inspection.

For the purpose of carrying out the provisions and requirements of this subchapter and the rules, regulations, and notices made and promulgated pursuant to it, the State Plant Board and its inspectors shall have power to enter into or upon any place and to open any bundle, package, or container of agricultural products.

History. Acts 1925, No. 218, § 18; Pope's Dig., § 12400; A.S.A. 1947, § 77-517.

2-20-114. Appeal of certification.

(a)(1) Whenever any quantity of any agricultural product shall have been inspected under this subchapter and a question arises as to whether the certificate issued therefor shows the true grade, classification, quality, or condition of the product, any interested person, subject to such regulations as the State Plant Board may prescribe, may appeal the question to the Director of the State Plant Board.

(2) The director is authorized to cause an investigation to be made and such tests to be applied as he or she may deem necessary and to determine and issue a finding of the true grade or classification of the product or of the quality or condition thereof.

(b) Whenever an appeal shall be taken to the director under this section, he or she shall charge and assess and collect or cause to be collected a reasonable fee, to be fixed by him or her, which shall be refunded if the appeal is sustained.

History. Acts 1925, No. 218, § 7; Pope's Dig., § 12390; A.S.A. 1947, § 77-507.

2-20-115. Certificate as evidence.

When not superseded by a finding on appeal of the grade, classification, quality, or condition of any agricultural product, a certificate issued under this subchapter and all certificates issued under authority of the Congress of the United States relating to grade, classification, quality, or condition of agricultural products shall be accepted in any court of this state as prima facie evidence of true grade, classification, condition, or quality of the agricultural product at the time of its inspection.

History. Acts 1925, No. 218, § 8; Pope's Dig., § 12391; A.S.A. 1947, § 77-508.

RESEARCH REFERENCES

Ark. L. Rev. Documentary Evidence — Arkansas, 15 Ark. L. Rev. 79.

2-20-116. Misrepresentations.

If any quantity of any agricultural product shall have been inspected and a certificate issued under this subchapter showing the grade, classification, quality, or condition thereof, no person shall represent the grade, classification, quality, or condition of the product at the time and place of the inspection as other than shown by the certificate.

History. Acts 1925, No. 218, § 12; Pope's Dig., § 12395; A.S.A. 1947, § 77-512.

2-20-117. Rule of agency.

In construing and enforcing the provisions of this subchapter, the act, omission, or failure of any official, agent, or other person acting for or employed by any person, association, partnership, or corporation within the scope of his or her employment or office shall also be deemed in every case the act, omission, or failure of such person, association, partnership, or corporation as well as that of the official, agent, or person.

History. Acts 1925, No. 218, § 17; Pope's Dig., § 12399; A.S.A. 1947, § 77-516.

SUBCHAPTER 2 — COTTON AND COTTON GINS

SECTION.

- 2-20-201. Public cotton gin defined.
- 2-20-202. Order in ginning.
- 2-20-203. Method of ginning.
- 2-20-204. Remedies for refusing to gin.
- 2-20-205. Records of seed cotton.

SECTION.

- 2-20-206. Failure to keep gin record.
- 2-20-207. Record of cotton weighed.
- 2-20-208. Failure to keep weighing record.

Cross References. Inspection of boilers, § 20-23-101 et seq.

Effective Dates. Acts 1901, No. 77, § 3: effective on passage.

Acts 1919, No. 447, § 5: effective on passage. Emergency declared. Approved Mar. 27, 1919.

Acts 1937, No. 318, § 3: approved Mar. 25, 1937. Emergency clause provided:

"The theft of seed cotton and the selling thereof to ginnermen by the person stealing same being a serious menace to the cotton growing farmers of this state, it is necessary, in order to preserve the peace and safety of the state that the provisions of this act shall go into effect at once; and an emergency is therefore declared to exist and the provisions of this act shall be in

force and effect from and after its passage."

RESEARCH REFERENCES

Am. Jur. 3 Am. Jur. 2d, Agri., § 52 et seq. **C.J.S.** 3 C.J.S., Agri., § 5.

2-20-201. Public cotton gin defined.

All cotton gins in Arkansas which gin cotton other than that grown on the farm where the gin is located or on a farm owned or controlled by the operator of the gin are declared to be public cotton gins.

History. Acts 1919, No. 447, § 1; C. & M. Dig., § 10454; A.S.A. 1947, § 77-801.

2-20-202. Order in ginning.

(a) All public cotton gins in this state as defined in § 2-20-201 are required to gin all cotton brought to the gin for ginning in the order in which it is presented for ginning.

(b) Cotton offered for ginning from vehicles shall be ginned as provided and ahead of cotton stored in gin buildings if, at the time offered, it is in condition to be ginned.

History. Acts 1919, No. 447, § 2; C. & M. Dig., § 10455; A.S.A. 1947, § 77-802.

2-20-203. Method of ginning.

(a) All cotton ginned by public gins in this state, as defined in § 2-20-201, shall be ginned in such a manner as to make a good sample and to give a reasonable turnout according to the condition of the cotton and shall be paid for by the person having the cotton ginned at a reasonable price per one hundred pounds (100 lbs.) of seed cotton, plus the bagging and ties furnished by the ginner at a reasonable price.

(b) The seed from any cotton ginned shall be delivered to the person having it ginned at his or her request or may be purchased by the ginner at such price as may be agreed upon.

History. Acts 1919, No. 447, § 3; C. & M. Dig., § 10456; A.S.A. 1947, § 77-803.

2-20-204. Remedies for refusing to gin.

(a)(1) Any person, firm, or corporation operating any public gin in this state as defined in § 2-20-201 who shall fail or refuse to gin cotton as required by §§ 2-20-202 and 2-20-203 shall be guilty of a violation.

(2) Upon conviction, an offender shall be fined in any sum not less than twenty-five dollars (\$25.00) nor more than fifty dollars (\$50.00).

(3) Each violation of this section shall constitute a separate offense.

(b) In addition to the fine, the offender shall be liable for double damages to the person aggrieved in a civil action.

History. Acts 1919, No. 447, § 4; C. & M. Dig., § 10457; A.S.A. 1947, § 77-804; Acts 2005, No. 1994, § 13.

Amendments. The 2005 amendment substituted "violation" for "misdemeanor" in (a)(1).

2-20-205. Records of seed cotton.

(a) Every person or corporation owning or operating any cotton gin within this state shall make and keep in a well-bound book a record of all seed cotton purchased at or for the gin, which shall show the:

- (1) Name and address of the seller;
- (2) Amount of seed cotton purchased;
- (3) Date purchased; and
- (4) Purchase price.

(b) The record shall be open at all times for inspection by any justice of the peace, constable, deputy constable, sheriff, deputy sheriff, prosecuting attorney, or deputy prosecuting attorney.

History. Acts 1937, No. 318, § 1; Pope's Dig., § 3064; A.S.A. 1947, § 77-805.

2-20-206. Failure to keep gin record.

Any person or corporation owning or operating any gin within the State of Arkansas who shall fail to make and keep the record required in § 2-20-205 or who shall refuse or fail to permit its inspection by any of the officers mentioned in § 2-20-205 shall be deemed guilty of a misdemeanor. Upon conviction, an offender shall be fined in any sum not less than ten dollars (\$10.00) nor more than one thousand dollars (\$1,000).

History. Acts 1937, No. 318, § 2; Pope's Dig., § 3065; A.S.A. 1947, § 77-806.

2-20-207. Record of cotton weighed.

(a) All persons weighing cotton for the public in this state and receiving compensation therefor shall be required to keep a book or record of all cotton weighed by them, giving:

- (1) The weight and marks of each bale;
- (2) For whom weighed; and
- (3) To whom sold where the purchaser is known to the weigher.

(b) The book or record shall be kept subject to inspection by the public.

History. Acts 1901, No. 77, § 1, p. 130;
C. & M. Dig., § 2446; Pope's Dig., § 3068;
A.S.A. 1947, § 77-811.

2-20-208. Failure to keep weighing record.

Any weigher who shall refuse to keep books or records or who shall, on demand of any person, fail or refuse to exhibit them shall be guilty of a misdemeanor. Upon conviction, an offender shall be fined in any sum not less than fifty dollars (\$50.00) nor more than one hundred dollars (\$100).

History. Acts 1901, No. 77, § 2, p. 130;
C. & M. Dig., § 2446; Pope's Dig., § 3068;
A.S.A. 1947, § 77-812.

SUBCHAPTER 3 — LABELING OF FRUITS AND VEGETABLES FOR INTERSTATE SHIPMENT

SECTION.

- 2-20-301. Title.
- 2-20-302. Definitions.
- 2-20-303. Applicability.
- 2-20-304. Transactions excepted.
- 2-20-305. Penalties.

SECTION.

- 2-20-306. Administration.
- 2-20-307. Marking of closed containers.
- 2-20-308. False representations.
- 2-20-309. Used containers.
- 2-20-310. Right of inspection.

Preambles. Acts 1947, No. 343 contained a preamble which read: "Whereas, the neglect of proper labeling as to actual contents of packaged peaches, tomatoes, strawberries, Irish potatoes, and apples grown in Arkansas; and the attendant unfair and unethical practices of selling inferior products misrepresented as high grade perishables, has resulted in lower prices received by Arkansas producers than are received by growers in competing states, and a generally poor reputation for

Arkansas grown products; and

"Whereas, reputable producers of these products in this state have suffered unfairly a consumer reaction against their products, the following act is proposed for their protection against such unfair marketing practices and in order that an improved and recognized quality of Arkansas packaged peaches, tomatoes, strawberries, Irish potatoes, and apples may be sold in competition with such products grown in other states"

RESEARCH REFERENCES

Am. Jur. 3 Am. Jur. 2d, Agri., § 52 et seq.

C.J.S. 3 C.J.S., Agri., § 5.

2-20-301. Title.

This subchapter shall be known as the "Arkansas Fruit and Vegetable Labeling Act of 1947", which is enacted in the exercise of the police powers of this state for the general welfare of the people of this state.

History. Acts 1947, No. 343, § 1; A.S.A. 1947, § 77-601.

2-20-302. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Persons" means individuals, partnerships, corporations, associations, or associations of two (2) or more individuals having a joint or common interest;

(2) "Places" means vessels, cars, and other vehicles, buildings, docks, railroad platforms, orchards, fields, and other premises where agricultural products are grown, kept, or handled;

(3) "Closed package" means a barrel, box, basket, sack, carrier, or crate, of which all of the contents cannot readily be seen or inspected when the package is prepared for market;

(4) "Utility" or "combination" means products packaged which may be any combination of the United States standard grades or grades established by this subchapter;

(5) "Ungraded" means products packaged which may be any combination of the United States standard grades or the grades established by this subchapter and, in addition, may include field run and all other grades with only soft and decayed fruit excluded;

(6) "Ripes" means products which are too ripe or soft, due to ripeness only, to ship, but which are satisfactory for short hauls and immediate consumption; and

(7) "Culls" means products which, on account of quality and condition, do not come within any of the above classifications or grades.

History. Acts 1947, No. 343, § 9; A.S.A. 1947, § 77-610.

2-20-303. Applicability.

(a)(1) The provisions of this subchapter are limited to peaches, tomatoes, strawberries, Irish potatoes, and apples which are grown and produced in Arkansas.

(2)(A) Standard grades for products covered by this subchapter shall be limited to United States grades and shall conform in all respects and be identical with the latest standards established by the United States Secretary of Agriculture.

(B) The State Plant Board shall have authority to prescribe and promulgate an Arkansas Commercial or Utility Grade and other and additional grades of peaches.

(b) Standard grades for peaches shall be the standard United States grades and the additional Arkansas grades designated as Utility or Combination, and Unclassified, and Ripes.

History. Acts 1947, No. 343, §§ 2A, 3; A.S.A. 1947, §§ 77-603, 77-604.

2-20-304. Transactions excepted.

This subchapter shall not apply to products:

- (1) Sold directly by a producer to consumer;
- (2) Sold by a producer in consumer packages or in bulk to retail trade exclusively in Arkansas; and
- (3) In transit from point of origin to a place of processing, further grading, or conditioning within Arkansas.

History. Acts 1947, No. 343, § 7; A.S.A. 1947, § 77-608.

2-20-305. Penalties.

Each person who by himself or herself or through his or her agent or employee violates any provision of this subchapter shall be guilty of a Class C misdemeanor for each offense.

History. Acts 1947, No. 343, § 8; A.S.A. 1947, § 77-609; Acts 2005, No. 1994, § 403.

deleted the subsection (a) designation; inserted "or herself," "or her" and "Class C" in former (a); and deleted former (b).

Amendments. The 2005 amendment

2-20-306. Administration.

The State Plant Board shall administer and enforce the provisions of this subchapter.

History. Acts 1947, No. 343, § 2; A.S.A. 1947, § 77-602.

2-20-307. Marking of closed containers.

(a) It shall be unlawful for any person to expose or offer for sale or have in his or her possession for sale or sell, transport, deliver, or consign any product covered by this subchapter in a closed package unless the container has been plainly marked or tagged in an indelible manner showing:

- (1) The name and address of the producer, shipper, or other person responsible for packing the product;
- (2) Contents in terms of net weight, measure, or numerical count and variety, state of origin, minimum size, etc., depending on the product; and
- (3) The official grade of the product.

(b) If the product does not conform to an official grade, the package or tag shall be marked "UNGRADED" or "CULLS", as the case may be.

(c) All markings shall be not less than one-fourth inch ($\frac{1}{4}$ ") in height, except that "CULLS" must be marked in letters not less than one inch (1") in height.

History. Acts 1947, No. 343, § 4; A.S.A. 1947, § 77-605.

2-20-308. False representations.

(a) It shall be unlawful for any person to expose or offer for sale or sell, transport, deliver, or consign, or have in his or her possession for sale products covered by this subchapter packed in a closed package in which the label or exposed surface gives a false representation of the contents of the package.

(b) It shall be considered a false representation if the exposed surface does not reasonably represent the size, quality, and varietal characteristics of the remaining portions of the package.

History. Acts 1947, No. 343, § 5; A.S.A. 1947, § 77-606.

2-20-309. Used containers.

It shall be unlawful for any person to expose, or offer for sale or sell, transport, deliver, consign, or have in his or her possession for sale products covered by this subchapter which are packed in used containers unless the used containers are clean, sanitary, and otherwise adequate for use in the trade and all prior labelings or markings are erased or obliterated.

History. Acts 1947, No. 343, § 6; A.S.A. 1947, § 77-607.

2-20-310. Right of inspection.

For the purpose of carrying out the provisions and requirements of this subchapter, the State Plant Board and its inspectors shall have power to enter into or upon any place and to open any bundle, package, or container of agricultural products.

History. Acts 1947, No. 343, § 11; A.S.A. 1947, § 77-611.

SUBCHAPTER 4 — SOYBEAN PROMOTION

SECTION.

- 2-20-401. Purpose.
- 2-20-402. Definitions.
- 2-20-403. Penalties.
- 2-20-404. Arkansas Soybean Promotion Board.
- 2-20-405. Arkansas Soybean Promotion Board — Powers.

SECTION.

- 2-20-406. Assessments on Arkansas-grown soybeans.
- 2-20-407. Reports — Books and records.
- 2-20-408. Refunds to producers.
- 2-20-409. Promotion program — Use of funds.

Effective Dates. Acts 1971, No. 259, § 9: July 1, 1971.

Acts 1989, No. 102, § 4: July 1, 1989.
Emergency clause provided: "It is hereby

found and determined by the General Assembly that it is essential to the soybean promotion in Arkansas that the assessment on soybeans for research, promotion

and market development be increased from one cent per bushel to two cents per bushel to provide necessary funds to fund the program; that this act is designed to provide such increase and in order to assure effective and efficient administration of the increase levy, it is essential that

the act become effective at the beginning of the fiscal year, July 1, 1989. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall be in full force and effect on and after July 1, 1989."

2-20-401. Purpose.

The purpose of this subchapter is to promote the growth and development of the soybean industry in Arkansas by research, extension, promotion, and market development, thereby promoting the general welfare of the people of Arkansas.

History. Acts 1971, No. 259, § 1; A.S.A. 1947, § 77-2001; Acts 1991, No. 340, § 1.

2-20-402. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Board" means the Arkansas Soybean Promotion Board created pursuant to this subchapter;

(2) "Net market price" means:

(A) The sales price or value received by a producer for soybeans after adjustments for any premium or discount based on grading or quality factors, as determined by the secretary; or

(B) For soybeans pledged as collateral for a loan issued under any price support loan program administered by the Commodity Credit Corporation, the principal amount of the loan;

(3) "Secretary" means the Secretary of Agriculture of the United States;

(4) "Soybean Promotion, Research and Consumer Information Act" means the federal Soybean Promotion, Research and Consumer Information Act of 1990, Subtitle E of Title XIX, of the Food, Agriculture, Conservation and Trade Act of 1990, P.L. No. 101-624, as amended from time to time, and any order issued pursuant thereto by the secretary; and

(5) "United Soybean Board" means the United Soybean Board created by the Soybean Promotion, Research and Consumer Information Act.

History. Acts 1991, No. 340, § 2.

Publisher's Notes. Former § 2-20-402, concerning the applicability of the subchapter, was repealed by Acts 1991, No. 340, § 2. The former section was derived from Acts 1971, No. 259, § 5; A.S.A. 1947, § 77-2005.

U.S. Code. The Soybean Promotion, Research and Consumer Information Act, referred to in this section, is codified as 7 U.S.C. § 6301 et seq.

2-20-403. Penalties.

(a)(1) Any first purchaser or other person required to pay an assessment pursuant to this subchapter who fails to pay any assessment when due shall forfeit a penalty of two percent (2%) of the assessment each month beginning the day following the date the assessment was due.

(2) The penalty shall be paid to the Arkansas Soybean Promotion Board or to its designee, the Director of the Department of Finance and Administration, and shall be disposed of in the same manner as funds derived from the payment of an assessment as provided in this subchapter.

(b) The board or its designee shall collect the penalty levied in this section, together with the delinquent assessment, by any and all of the following methods:

- (1) Voluntary payment by the person liable;
 - (2) Legal proceedings instituted in a court of competent jurisdiction;
- or

(3) Injunctive relief to enjoin any person owing the assessment or penalty from operating his or her business or engaging in business as a buyer or seller of soybeans until the delinquent assessment or penalty is paid.

(c)(1) Any person required to pay the assessment provided for in this subchapter who refuses to allow full inspection of the premises or any book, record, or other document relating to the liability of the person for the assessment imposed or who shall hinder or in any way delay or prevent the inspection shall be guilty of a violation.

(2) Upon conviction, an offender shall be punished by a fine not exceeding five hundred dollars (\$500).

History. Acts 1971, No. 259, § 4; A.S.A. 1947, § 77-2004; Acts 1991, No. 340, § 3; 2005, No. 1994, § 14.	Amendments. The 2005 amendment substituted “violation” for “misdemeanor” in (c)(1).
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2-20-404. Arkansas Soybean Promotion Board.

(a) The Arkansas Soybean Promotion Board is created. The board shall be composed of nine (9) producer members appointed by the Governor as follows:

(1)(A) The Arkansas Farm Bureau Federation, Riceland Foods, Inc., Arkansas Soybean Association, and Agriculture Council of Arkansas shall submit the names of five (5) practical soybean producers to the Governor.

(B) The Governor shall appoint three (3) members from the list submitted by the Arkansas Farm Bureau Federation, and two (2) members from the list submitted by each of the other organizations named above to serve on the board.

(C) All of the nine (9) producer members of the board shall be practical producers of soybeans in the State of Arkansas and shall be nominated by their respective organizations;

(2) Each year, not less than thirty (30) days prior to the expiration of the terms of the current board members whose terms expire, the organizations named in subdivision (a)(1)(A) of this section shall submit to the Governor names of two (2) nominees for each position to be filled on the board from the respective organizations, and the Governor shall appoint the new members from each list of nominees; and

(3) Each member selected shall serve for a term of two (2) years and until his or her successor is duly selected as provided in this section.

(b) The members of the board shall meet and organize immediately after their appointment and shall elect a chair, a vice chair, and a secretary-treasurer from the membership of the board, whose duties shall be those customarily exercised by those officers or specifically designated by the board. The principal office of the board shall be located at the office of the Arkansas Farm Bureau Federation, in Little Rock.

(c) The board may establish rules and regulations for its own government and for the administration of the affairs of the board.

(d) The board is designated as the qualified state soybean board to represent the State of Arkansas pursuant to the Soybean Promotion, Research and Consumer Information Act of 1990.

History. Acts 1971, No. 259, § 2; 1979, No. 355, § 1; A.S.A. 1947, § 77-2002; Acts 1991, No. 340, § 4; 1999, No. 351, § 1.

Publisher's Notes. Acts 1971, No. 259, § 2 provided in part, that the initial members selected from the Arkansas Farm Bureau Federation would draw lots to determine their terms so that two of the members would serve for two-year terms and one would serve for a one-year term while the members from each of the other organizations would draw lots for terms so

that one would serve for a one-year term and one would serve for a two-year term.

U.S. Code. As to the Soybean Promotion, Research and Consumer Information Act of 1990, see note to § 2-20-402.

The Soybean Promotion, Research and Consumer Information Act, referred to in (d), is codified as 7 U.S.C. § 6301 et seq.

Cross References. Division of Agriculture — Service on boards or commissions, § 6-64-106.

2-20-405. Arkansas Soybean Promotion Board — Powers.

(a) The Arkansas Soybean Promotion Board shall have power:

(1) To conduct plans, projects, or activities that are intended to strengthen the soybean industry's position in the marketplace;

(2) To report to the United Soybean Board the manner in which assessments are collected and the procedure utilized to ensure that assessments due are paid;

(3) To collect assessments paid on soybeans marketed within the state and to establish procedures for ensuring compliance with regard to the payment of such assessments; provided, that the Arkansas Soybean Promotion Board may designate the Director of the Department of Finance and Administration to collect assessments and ensure compliance with regard to the payment of such assessments, subject to such rules as may be promulgated by the Arkansas Soybean Promotion Board and as may be reasonably necessary to comply with the Soybean Promotion, Research and Consumer Information Act of 1990;

(4) To remit to the United Soybean Board any assessments paid pursuant to this subchapter and the Soybean Promotion, Research and Consumer Information Act of 1990, minus authorized credits and other required deductions, by the last day of the month following the month in which the assessment was paid, unless the United Soybean Board determines a different date for remittance of assessments;

(5) To pay refunds of assessments as required by the Secretary of Agriculture or as authorized by this subchapter and determined by the Arkansas Soybean Promotion Board;

(6) To establish escrow accounts to be held and administered as special fund accounts by the Treasurer of State, for the payment of refunds in such amounts and for such periods as required by the secretary or as authorized by this subchapter and determined by the board; provided, that interest from such accounts shall accrue to the board to be used for authorized activities;

(7) To furnish the United Soybean Board with an annual report by a certified public accountant or an authorized state agency of all funds remitted to the United Soybean Board;

(8) To receive and certify petitions as provided in § 2-20-406(b)(3) and to conduct a referendum election or elections pursuant to this subchapter or the Soybean Promotion, Research and Consumer Information Act of 1990;

(9) To exempt by resolution a class of persons who purchase one thousand (1,000) or fewer bushels of soybeans in any calendar year from the assessment imposed by § 2-20-406(b)(1);

(10) To contract with the United Soybean Board or other persons to implement plans or projects pursuant to this subchapter and the Soybean Promotion, Research and Consumer Information Act of 1990; and

(11) To take such further action as may be necessary or appropriate to comply with and to administer this subchapter and the Soybean Promotion, Research and Consumer Information Act of 1990.

(b) The Arkansas Soybean Promotion Board shall not use funds collected or received pursuant to this subchapter or the Soybean Promotion, Research and Consumer Information Act of 1990:

(1) To fund plans or projects which make use of any unfair or deceptive acts or practices with respect to the quality, value, or use of any product that competes with soybeans or soybean products; or

(2) To influence any action or policy of the United States Government, any foreign or state government, or any political subdivision thereof; provided, however, that this subdivision (b)(2) shall not apply to:

(A) The communication to appropriate government officials of information relating to the conduct, implementation, or results of promotion, research, consumer information, and industry information;

(B) Any action designed to market soybeans or soybean products directly to a foreign government or a political subdivision thereof; or

(C) The development and recommendation of amendments to this subchapter or the Soybean Promotion, Research and Consumer Information Act of 1990.

History. Acts 1991, No. 340, § 5.

Publisher's Notes. Former § 2-20-405, concerning the holding and conduct of a referendum in each county by the Arkansas Soybean Promotion Board, was repealed by Acts 1989, No. 102, § 3. The

former section was derived from Acts 1971, No. 259, § 3; 1979, No. 355, §§ 2, 3; A.S.A. 1947, § 77-2003.

U.S. Code. As to the Soybean Promotion, Research and Consumer Information Act of 1990, see note to § 2-20-402.

2-20-406. Assessments on Arkansas-grown soybeans.

(a)(1) Except as otherwise prescribed by regulations approved by the Secretary of Agriculture or the Arkansas Soybean Promotion Board, each person purchasing from, and making payment to, a producer for soybeans produced by such producer and marketed for commercial use, including, in any case in which soybeans are pledged as collateral for a loan issued under any federal price support loan program, the Commodity Credit Corporation, shall be a first purchaser and shall collect an assessment from the producer, and each producer shall pay such assessment to the first purchaser, at the applicable rate prescribed in this section. Each first purchaser shall remit such assessment to the board or to its designee, the Director of the Department of Finance and Administration. For the purpose of this section, purchases from a producer of soybeans or contracts with a producer for production of soybeans for livestock feed or any other application shall constitute marketing for commercial use.

(2) Any producer marketing processed soybeans or soybean products of that producer's own production to consumers, either directly or through retail or wholesale outlets, or for export purposes, shall remit the assessment as required by this section.

(b)(1) Effective July 1, 1989, there is imposed and levied an assessment at the rate of two cents (2¢) per bushel on all soybeans grown within the State of Arkansas. The assessment shall be deducted from the amount paid the producer at the first point of sale, whether within or without the state, or at the point the soybeans enter into the United States Department of Agriculture loan program.

(2) Notwithstanding subdivision (b)(1) of this section, if an assessment is made pursuant to the Soybean Promotion, Research and Consumer Information Act of 1990 upon soybeans grown within the State of Arkansas, then, for so long as such assessment is effective, the assessment imposed and levied pursuant to this section shall be one-quarter percent (0.25%) of the net market price of all soybeans grown within the State of Arkansas. The assessment of one-quarter percent (0.25%) shall not be in addition to the national assessment, but is intended to correspond to the state credit for assessments paid to a qualified state soybean board pursuant to the Soybean Promotion, Research and Consumer Information Act of 1990. If an assessment pursuant to the Soybean Promotion, Research and Consumer Informa-

tion Act of 1990 shall cease to be effective, then, for so long as no such assessment is made, the assessment imposed and levied pursuant to this section shall be as provided in subdivision (b)(1) of this section.

(3)(A) So long as the assessment on soybeans provided for in this section is two cents (2¢) per bushel, the question of the levy of the two cents (2¢) per bushel assessment on soybeans may be referred to a vote of the soybean producers of the state by the filing of petitions with the board containing signatures of Arkansas soybean producers equal in number to fifteen percent (15%) of all soybean producers in the state.

(B) If the petitions are filed and at the referendum election a majority of the Arkansas soybean producers voting on the question vote against the levy of two cents (2¢) per bushel on soybeans, the assessment shall not thereafter be levied.

(C) Only those soybean producers who produce soybeans in Arkansas in the crop year immediately preceding the referendum election shall be eligible to vote in the election.

(c)(1) The proceeds of the assessment shall be deposited with the Treasurer of State in a special fund to be established for the Arkansas Soybean Promotion Board; provided, that the director may deduct not more than three percent (3%) to cover the cost of collections.

(2) Disbursement shall be made only upon motion duly passed by the board and presented to the Treasurer of State and only for the purposes prescribed in this subchapter.

History. Acts 1971, No. 259, § 3; 1979, No. 355, §§ 2, 3; A.S.A. 1947, § 77-2003; Acts 1989, No. 102, § 1; 1991, No. 340, § 6.

U.S. Code. As to the Soybean Promotion, Research and Consumer Information Act of 1990, see note to § 2-20-402.

2-20-407. Reports — Books and records.

(a) Each person responsible for the collection and remittance of assessments pursuant to § 2-20-406(a) shall report to the Arkansas Soybean Promotion Board such information as may be required from time to time by regulations approved by the Secretary of Agriculture or the board. Such information may include, but not be limited to, the following:

(1) The number of bushels of soybeans purchased, initially transferred, or which, in any other manner, is subject to the collection of assessment;

(2) The amount of assessments remitted;

(3) The basis, if necessary, to show why the remittance is less than the applicable rate of assessment per bushel of soybeans purchased multiplied by the number of bushels purchased; and

(4) The date any assessment was paid.

(b)(1) Each person who is subject to this subchapter shall maintain and make available for inspection by the secretary, the board or its designee, the Director of the Department of Finance and Administration, such books and records as are necessary to carry out the provisions

of this subchapter and the regulations issued thereunder, including such records as are necessary to verify any reports required. Such records shall be retained for at least two (2) years beyond the fiscal period of their applicability.

(2) Any producer who plants less than twenty-five (25) acres of soybeans annually shall not be required to maintain books or records pursuant to this section.

(c) All information obtained from books, records, or reports required to be filed or kept pursuant to this section shall be kept confidential by all persons, including employees and former employees of the board, all officers and employees and all former officers and employees of the Department of Finance and Administration, and by all officers and employees and all former officers and employees of contracting parties having access to such information, and shall not be available to board members or any other producers. Only those persons having a specific need for such information in order to effectively administer the provisions of this subchapter shall have access to such information. In addition, only such information so furnished or acquired as the secretary or the board deems relevant shall be disclosed by them, and then only in a suit or administrative hearing brought at the direction, or upon the request, of the secretary or the board, or to which the secretary, any officer of the United States, the board, or the director, is a party. Nothing in this section shall be deemed to prohibit:

(1) The issuance of general statements based upon the reports of the number of persons subject to this subchapter or statistical data collected therefrom, which statements do not identify the information furnished by any person; and

(2) The publication, by direction of the secretary or the board, of the name of any person who has been adjudged to have violated this subchapter, together with a statement of the particular provisions of the subchapter violated by such person.

History. Acts 1971, No. 259, § 3; 1979, No. 355, §§ 2, 3; A.S.A. 1947, § 77-2003; Acts 1991, No. 340, § 7.

2-20-408. Refunds to producers.

(a) So long as the assessment on soybeans is as provided in § 2-20-406(b)(1), any soybean producer may request and receive a refund of such assessment, provided he or she makes a written application therefor with the Arkansas Soybean Promotion Board or its designee, the Director of the Department of Finance and Administration, within forty-five (45) days from the date of sale, supported by copies of sales slips signed by the purchaser, and provided further, that the application is filed before the annual accounting is made of the funds not later than July 1 each year.

(b) So long as the assessment on soybeans is as provided in § 2-20-406(b)(2), any soybean producer may request and receive a refund of

such assessment to the extent provided by the Soybean Promotion, Research and Consumer Information Act of 1990. Such producer shall make written application therefor with the board or its designee, the director, within forty-five (45) days from the date the assessment was due from such producer, supported by copies of sales slips signed by the purchaser.

History. Acts 1971, No. 259, § 3; 1979, No. 355, §§ 2, 3; A.S.A. 1947, § 77-2003; Acts 1991, No. 340, § 8.

U.S. Code. As to the Soybean Promotion, Research and Consumer Information Act of 1990, see note to § 2-20-402.

2-20-409. Promotion program — Use of funds.

(a) The Arkansas Soybean Promotion Board shall administer this subchapter to promote the soybean industry in Arkansas and shall be vested with the authority and discretion to determine administrative or program implementation and administrative or program expenditure allocations.

(b)(1)(A) The board is authorized to use the funds derived from the assessments imposed in this subchapter for research, extension, market development, and advertising designed to promote the soybean industry in Arkansas, including administration expenses.

(B) Use of these funds may be applied, as prescribed in this section, within or without Arkansas, including regional, national, and international applications.

(2) The funds may also be used to defray costs of referenda.

History. Acts 1971, No. 259, § 6; A.S.A. 1947, § 77-2006; Acts 1991, No. 340, § 9.

SUBCHAPTER 5 — RICE PROMOTION

SECTION.

2-20-501. Title.

2-20-502. Purpose.

2-20-503. Applicability.

2-20-504. Penalties.

2-20-505. Arkansas Rice Research and Promotion Board.

2-20-506. [Repealed.]

SECTION.

2-20-507. Assessments on grown rice.

2-20-508. Records and other documentation.

2-20-509. [Repealed.]

2-20-510. Promotion and research programs.

2-20-511. [Repealed.]

A.C.R.C. Notes. On July 15, 1999, the Arkansas Supreme Court affirmed the chancery court decree which invalidated the buyer's assessment levied under § 2-20-511. *Tim Leathers, Comm'r of Revenues, et al v. Gulf Rice Arkansas, Inc. and Gulf Pacific Rice Co., Inc.*, No. 98-737 (Ark. Sup. Ct. July 15, 1999). Accordingly, pursuant to Acts 1999, No. 16, § 10, the effective date of 1999, No. 16, is July 15, 1999.

Effective Dates. Acts 1985, No. 725, § 10: Aug. 1, 1985.

Acts 1995, No. 344, § 5: Feb. 16, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that the referendum provided in this act should be in effect prior to August 1; that in order to allow enough time to prepare for and conduct the referendum this act must go into effect immediately. Therefore, an emergency is hereby de-

clared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1999, No. 16, § 10: July 15, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly that the Arkansas Rice Research and Promotion Act of 1985 is currently subject to litigation; if the assessment levied under that act is ruled invalid substantial damage to the efforts of marketing Arkansas produced rice will result; that this act provides an assessment which is less subject to attack and will assure the continued funding for the program to promote the sale of Arkansas produced rice; and this act should therefore go into effect at the time the existing assessment is ruled invalid if that occurs. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it

shall become effective on the date the last house overrides the veto. However if the occurrences just described occur prior to a court of competent jurisdiction invalidating the current assessment for Rice Research and Promotion, this act shall become effective at the time of that court decision unless the decision occurs later than ninety-one (91) days after adjournment of this regular session in which case this case will become effective ninety-one (91) days after adjournment of the session."

Acts 2005, No. 852, § 3: Mar. 15, 2005. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act clarifies the use of funds from assessments on grown rice; and that this act is immediately necessary in order to avoid future controversies and to ensure the proper use of the funds. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

2-20-501. Title.

This subchapter shall be known and may be cited as the "Arkansas Rice Research and Promotion Act of 1999".

History. Acts 1985, No. 725, § 1; A.S.A. 1947, § 77-2501; Acts 1999, No. 16, § 1.

2-20-502. Purpose.

The purpose of this subchapter is to promote the growth and development of the rice industry in Arkansas by research, extension, promotion, and market development, thereby promoting the general welfare of the people of Arkansas.

History. Acts 1985, No. 725, § 2; A.S.A. 1947, § 77-2502.

2-20-503. Applicability.

The provisions of this subchapter shall not apply to any person who purchases one thousand (1,000) or fewer bushels of rice in any calendar year.

History. Acts 1985, No. 725, § 6; A.S.A. 1947, § 77-2506.

2-20-504. Penalties.

(a)(1) Any buyer who fails to file a report or pay any assessment within the required time set by the Director of the Department of Finance and Administration shall forfeit to the director a penalty of five percent (5%) of the assessment determined to be due plus one percent (1%) for each month of delay, or fraction of a month, after the first month after the report was required to be filed or the assessment became due.

(2) The penalty shall be paid to the director and shall be disposed of by him or her in the same manner as funds derived from the payment of assessment imposed in this subchapter.

(b) The director shall collect the penalty levied in this subchapter, together with the delinquent assessment, by any or all of the following methods:

(1) Voluntary payment by the person liable;

(2) Legal proceedings instituted in a court of competent jurisdiction;

or

(3) Injunctive relief to enjoin any buyer owing an assessment or penalty from operating his or her business or engaging in business as a buyer of rice until the delinquent assessment or penalty is paid.

(c)(1) Any person required to pay the assessment provided for in this subchapter who refuses to allow full inspection of the premises or any book, record, or other document relating to the liability of the person for the assessment imposed in this subchapter or who shall hinder or in any way delay or prevent the inspection shall be guilty of a violation.

(2) Upon conviction, an offender shall be punished by a fine not exceeding five hundred dollars (\$500).

History. Acts 1985, No. 725, § 5; A.S.A. 1947, § 77-2505; Acts 2005, No. 1994, § 15.

Amendments. The 2005 amendment added "or" in (b)(2); and substituted "violation" for "misdemeanor" in (c)(1).

2-20-505. Arkansas Rice Research and Promotion Board.

(a) The Arkansas Rice Research and Promotion Board is created.

(b)(1) The board shall be composed of nine (9) producer members to be appointed by the Governor as follows:

(A) Three (3) members shall represent the Arkansas Farm Bureau Federation;

(B) Two (2) members shall represent Riceland Foods, Inc.;

(C) One (1) member shall represent the Agricultural Council of Arkansas;

(D) One (1) member shall represent Producers Rice Mill, Inc.;

(E) One (1) member shall represent the Arkansas Rice Council; and

(F) One (1) member shall represent the independent mills of Arkansas.

(2) All of the nine (9) producer members of the board shall be practical producers of rice in the State of Arkansas and shall be nominated by their respective organizations.

(3) Each year, not less than thirty (30) days prior to the expiration of the terms of the current board members whose terms expire in that year, the organizations named in subdivision (b)(1) of this section shall submit to the Governor names of two (2) nominees for each position to be filled on the board from the respective organizations, and the Governor shall appoint the new members from each list of nominees.

(4) Each member selected shall serve for a term of two (2) years and until his or her successor is duly selected as provided in this section.

(c) The members of the board shall meet and organize immediately after their appointment and shall elect a chair, a vice chair, and a secretary-treasurer from the membership of the board, whose duties shall be those customarily exercised by those officers or specifically designated by the board. All officers shall serve for a period of one (1) year and until their successors are duly elected.

(d) The board may establish rules and regulations for its own government and for the administration of affairs of the board.

(e) The resident agent of the board shall be the executive vice president, Arkansas Farm Bureau Federation, or his or her designee.

History. Acts 1985, No. 725, § 3; A.S.A. 1947, § 77-2503; Acts 1999, No. 16, § 2.

Publisher's Notes. Acts 1985, No. 725, § 3, provided, in part, that within ten days after August 1, 1985, each of the organizations named in this section should submit the names of two practical rice producers to the Governor for each position to be appointed from nominations of the respective organization. The Governor was to appoint three members from the list submitted by the Arkansas Farm Bureau Federation, Inc., two members from the list submitted by Riceland Foods, Inc., one member representing Agricultural Council of Arkansas, one member representing Producers Rice Mill, Inc., one member representing Arkansas Rice Council, and one member representing

the Independent Millers of Arkansas to serve on the board. The members selected from the Arkansas Farm Bureau Federation, Inc., were to draw lots to determine their terms so that two of them would serve for terms of two years and one would serve for a term of one year. The members selected from Riceland Foods, Inc., were to draw lots so that one would serve for a term of one year and one serve for a term of two years. The members from the other organizations were to draw lots for terms so that two would serve for terms of one year and two would serve for terms of two years.

Cross References. Division of Agriculture — Service on boards or commissions, § 6-64-106.

2-20-506. [Repealed.]

Publisher's Notes. Former § 2-20-506, concerning the referendum in each county, was repealed by Acts 1999, No. 16, § 3. The section was derived from the following sources: Acts 1985, No. 725, § 4; A.S.A. 1947, § 77-2504.

2-20-507. Assessments on grown rice.

(a) There are imposed and levied:

(1) An assessment at the rate of one and thirty-five hundredths cents (1.35¢) per bushel to be paid by the buyer at the first point of sale, whether within or without the state, on rice grown within the state or at the point the rice enters into the United States Department of Agriculture loan program; and

(2) An assessment at the rate of one and thirty-five hundredths cents (1.35¢) per bushel to be paid by the producer on all rice grown within this state.

(b) The assessment imposed and levied by this section shall be collected by the Director of the Department of Finance and Administration from the buyer of rice at the first point of sale or at the point the rice enters into the United States Department of Agriculture loan program.

(c)(1) The proceeds of the assessment, less not more than three percent (3%) to cover the cost of collections, shall be deposited with the Treasurer of State in a special fund to be established for the Arkansas Rice Research and Promotion Board to the credit of the board.

(2) Disbursement shall be made only upon a motion duly passed by the board and presented to the Treasurer of State and only for a purpose prescribed in this subchapter.

(d)(1) The funds derived from the assessment paid by a buyer at the first point of sale shall be used for:

(A) Market development and promotion;

(B) Basic administration expenses; and

(C) Defraying the costs of referenda that the board may refer to buyers of rice.

(2) The funds derived from the assessment paid by a producer shall be used for:

(A) Rice extension and rice research;

(B) Basic administration expenses; and

(C) Defraying the costs of referenda that the board may refer to producers of rice.

(3) Funds under subdivisions (d)(1) and (2) of this section may be applied within or without Arkansas, including regional, national, and international applications.

History. Acts 1985, No. 725, § 4; A.S.A. 1947, § 77-2504; Acts 1999, No. 16, § 4; 2005, No. 852, § 1. **Amendments.** The 2005 amendment added (d).

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. McCorkle, Court Defines a Limit on the Delegation of Constitutional Law — Arkansas' Nondel- Legislative Authority to a Private Party, egation Doctrine: The Arkansas Supreme 23 U. Ark. Little Rock L. Rev. 297.

2-20-508. Records and other documentation.

(a)(1) Every buyer shall keep a complete and accurate record of all rice handled by him or her.

(2) The records shall be in such form and contain other information as the Arkansas Rice Research and Promotion Board shall prescribe by rule or regulation.

(3) The record shall be preserved for a period of one (1) year and shall be offered for inspection at any time upon written demand by the Director of the Department of Finance and Administration or any duly authorized agent or representative of him or her.

(b)(1) At such times as the director may require, every buyer shall submit reports or otherwise document any information deemed necessary for the efficient collection of the assessment imposed in this subchapter.

(2) The director shall have the power to cause any duly authorized agent or representative to enter upon the premises of any buyer of rice and examine or cause to be examined by the agent any books, papers, and records which deal in any way with respect to the payment of the assessment or enforcement of the provisions of this subchapter.

History. Acts 1985, No. 725, § 4; A.S.A. 1947, § 77-2504.

2-20-509. [Repealed.]

Publisher's Notes. This section, concerning refunds to producers, was repealed by Acts 1999, No. 16, § 5. The section was derived from Acts 1985, No. 725, § 4; A.S.A. 1947, § 77-2504.

2-20-510. Promotion and research programs.

The Arkansas Rice Research and Promotion Board shall plan and conduct a program of research, extension, market development, and advertising designed to promote the rice industry in Arkansas.

History. Acts 1985, No. 725, § 7; A.S.A. 1947, § 77-2507; Acts 1999, No. 16, § 6; 2005, No. 852, § 2.

Amendments. The 2005 amendment deleted the subdivision (a) designation; and deleted former (b).

2-20-511. [Repealed.]

Publisher's Notes. This section, concerning a referendum for alternative assessment on grown rice, was repealed by

Acts 2001, No. 1553, § 2. The section was derived from Acts 1995, No. 344, § 1.

SUBCHAPTER 6 — WHEAT PROMOTION

SECTION.

- 2-20-601. Purpose.
- 2-20-602. Applicability.
- 2-20-603. Penalties.
- 2-20-604. Arkansas Wheat Promotion Board.
- 2-20-605. Referendum in each county.
- 2-20-606. Assessments on grown wheat.

SECTION.

- 2-20-607. Records and other documenta-
tion.
- 2-20-608. Refunds to producers.
- 2-20-609. Promotion program — Use of
funds.
- 2-20-610. Resident agent.

Effective Dates. Acts 1985, No. 283, § 9: Aug. 1, 1985.
Acts 1995, No. 107, § 6: July 1, 1995.
Emergency clause provided: "It is hereby found and determined by the General Assembly that the increase in the Wheat Promotion Board Assessment should apply to the current year's crop; and that unless this act goes into effect on July 1,

1995, a substantial portion of the crop will not be subject to the increased assessment levied by this act. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1995."

2-20-601. Purpose.

The purpose of this subchapter is to promote the growth and development of the wheat industry in Arkansas by research, extension, promotion, and market development, thereby promoting the general welfare of the people of Arkansas.

History. Acts 1985, No. 283, § 1; A.S.A. 1947, § 77-2401.

2-20-602. Applicability.

The provisions of this subchapter shall not apply to any person who purchases one thousand (1,000) or fewer bushels of wheat in any calendar year.

History. Acts 1985, No. 283, § 5; A.S.A. 1947, § 77-2405.

2-20-603. Penalties.

(a)(1) Any buyer who fails to file a report or pay any assessment within the required time set by the Director of the Department of Finance and Administration shall forfeit to the director a penalty of five percent (5%) of the assessment determined to be due plus one percent (1%) for each month of delay, or fraction of a month, after the first month after the report was required to be filed or the assessment became due.

(2) The penalty shall be paid to the director and shall be disposed of by him or her in the same manner as funds derived from the payment of assessment imposed in this subchapter.

(b) The director shall collect the penalty levied in this subchapter, together with the delinquent assessment, by any or all of the following methods:

(1) Voluntary payment by the person liable;

(2) Legal proceedings instituted in a court of competent jurisdiction;
or

(3) Injunctive relief to enjoin any buyer owing an assessment or penalty from operating his or her business or engaging in business as a buyer of wheat until the delinquent assessment or penalty is paid.

(c)(1) Any person required to pay the assessment provided for in this subchapter who refuses to allow full inspection of the premises or any book, record, or other document relating to the liability of the person for the assessment imposed in this subchapter or who shall hinder or in any way delay or prevent the inspection shall be guilty of a violation.

(2) Upon conviction, an offender shall be punished by a fine not exceeding five hundred dollars (\$500).

History. Acts 1985, No. 283, § 4; A.S.A. 1947, § 77-2404; Acts 2005, No. 1994, § 16.

Amendments. The 2005 amendment substituted "violation" for "misdemeanor" in (c)(1).

2-20-604. Arkansas Wheat Promotion Board.

(a) The Arkansas Wheat Promotion Board is created.

(b)(1) The board shall be composed of nine (9) producer members to be appointed by the Governor as follows:

(A) Three (3) members shall represent the Arkansas Farm Bureau Federation;

(B) Two (2) members shall represent Riceland Foods, Inc.;

(C) Two (2) members shall represent the Arkansas Wheat Growers Association; and

(D) Two (2) members shall represent the Agricultural Council of Arkansas.

(2) All of the nine (9) members of the board shall be practical producers of wheat in the State of Arkansas and shall be nominated by their respective organizations.

(3) Each year, not less than thirty (30) days prior to the expiration of the terms of the current board members whose terms expire in that year, the organizations named above shall submit to the Governor names of two (2) nominees for each position to be filled on the board from the respective organizations, and the Governor shall appoint the new members from each list of nominees.

(4) Each member selected shall serve for a term of two (2) years and until his or her successor is duly selected as provided in this section.

(c) The members of the board shall meet and organize immediately after their appointment and shall elect a chair, a vice chair, and a secretary-treasurer from the membership of the board, whose duties

shall be those customarily exercised by those officers or specifically designated by the board.

(d) The board may establish rules and regulations for its own government and for the administration of affairs of the board.

History. Acts 1985, No. 283, § 2; A.S.A. 1947, § 77-2402; Acts 1999, No. 351, § 2.

Publisher's Notes. Acts 1985, No. 283, § 2, provided, in part: "The Arkansas Wheat Promotion Board is created to be domiciled in Little Rock, Arkansas, 10720 Kanis Road, to be composed of nine producer members to be appointed by the Governor as herein provided."

Acts 1985, No. 283, § 2, also provided, in part, that, within ten days after August 1, 1985, each of the organizations named in this section should submit the names of five practical wheat producers to the Governor and that he or she should appoint

three members from the list submitted by the Arkansas Farm Bureau Federation, Inc., and two members from the lists submitted by each of the other organizations to serve on the board. The members selected from the Arkansas Farm Bureau Federation, Inc., were to draw lots to determine their terms so that two of them would serve for terms of two years and one would serve for a term of one year. The members from each of the other organizations would draw lots for terms so that one would serve for a term of one year and one would serve for a term of two years.

2-20-605. Referendum in each county.

(a) The Arkansas Wheat Promotion Board shall appoint three (3) wheat producers from each county who will be responsible for holding a referendum in the county.

(b) The board will set the dates for the referendum.

(c) In all such referenda, in order to be eligible to vote, the producer must have produced wheat in the crop year immediately preceding the referendum.

(d) Voting shall be in Agricultural Stabilization and Conservation Service offices under supervision of the three (3) producers appointed to hold the referendum.

(e) Ballots will be furnished by the board.

(f) The results shall be certified not more than three (3) days after election, on forms furnished by the board, by registered mail to the board.

(g) The board shall be reimbursed from funds collected for costs of holding referenda.

History. Acts 1985, No. 283, § 3; A.S.A. 1947, § 77-2403.

2-20-606. Assessments on grown wheat.

(a)(1) There is imposed and levied an assessment at the rate of one cent (1¢) per bushel on all wheat grown within the state.

(2) This assessment shall be deducted from the amount paid the producer at the first point of sale, whether within or without the state, or at the point the wheat enters into the United States Department of Agriculture loan program.

(3) This assessment may be extended for an indefinite period of time or until twenty percent (20%) of the producers ask for return of funds; then another referendum shall be called by the board in the manner set forth in this subchapter.

(b)(1) The assessment imposed and levied by this section shall be collected by the Director of the Department of Finance and Administration from the buyer of wheat at the first point of sale or when the wheat enters the United States Department of Agriculture loan program.

(2)(A) The proceeds of the assessment, less not more than three percent (3%) to cover cost of collections, shall be deposited with the Treasurer of State in a special fund to be established for the board to the credit of the board.

(B) Disbursement shall be made only upon motions duly passed by the board and presented to the Treasurer of State, and only for purposes prescribed in this subchapter.

History. Acts 1985, No. 283, § 3; A.S.A. 1947, § 77-2403; Acts 1995, No. 107, § 1.

A.C.R.C. Notes. As amended by Acts 1995, No. 107, § 1, subdivision (a)(1)

ended: "from July 1, 1995." Subdivision (a)(3) began: "The assessment imposed in this section shall be effective beginning July 1, 1995."

2-20-607. Records and other documentation.

(a)(1) Every buyer shall keep a complete and accurate record of all wheat handled by him or her.

(2) The records shall be in such form and contain other information as the Arkansas Wheat Promotion Board shall prescribe, by rule or regulation.

(3) The record shall be preserved for a period of one (1) year and shall be offered for inspection at any time upon written demand by the Director of the Department of Finance and Administration or any duly authorized agent or representative of him or her.

(b)(1) At such times as the director may require, every buyer shall submit reports or otherwise document any information deemed necessary for the efficient collection of the assessment imposed in this subchapter.

(2) The director shall have the power to cause any duly authorized agent or representative to enter upon the premises of any buyer of wheat and examine or cause to be examined by the agent any books, papers, and records which deal in any way with respect to the payment of the assessment or enforcement of the provisions of this subchapter.

History. Acts 1985, No. 283, § 3; A.S.A. 1947, § 77-2403.

2-20-608. Refunds to producers.

Any wheat producer may request and receive a refund of the amount deducted from the sale of his or her wheat if:

(1) He or she makes a written application with the Director of the Department of Finance and Administration within forty-five (45) days from the date of sale, supported by copies of sales slips signed by the purchaser; and

(2) The application is filed before the annual accounting is made of the funds not later than July 1 each year.

History. Acts 1985, No. 283, § 3; A.S.A. 1947, § 77-2403.

2-20-609. Promotion program — Use of funds.

(a) The Arkansas Wheat Promotion Board shall plan and conduct a program of research, extension, market development, and advertising designed to promote the wheat industry in Arkansas.

(b)(1)(A) The board is authorized to use the funds derived from the assessments imposed in this subchapter for these purposes, including basic administration expenses of the plan.

(B) Use of these funds may be applied, as prescribed in this section, within or without the State of Arkansas, including regional, national, and international applications.

(2) The funds may also be used to defray costs of referenda.

History. Acts 1985, No. 283, § 6; A.S.A. 1947, § 77-2406.

2-20-610. Resident agent.

The resident agent of the Arkansas Wheat Promotion Board shall be the executive vice president of Arkansas Farm Bureau Federation, or his or her designee.

History. Acts 1995, No. 107, § 2.

SUBCHAPTER 7 — REGULATION OF GINSENG**SECTION.**

2-20-701. Authority to regulate.

2-20-702. Rules and regulations.

2-20-703. Research program.

SECTION.

2-20-704. Dealer license — Fee.

2-20-705. Artificial propagation fee.

Effective Dates. Acts 1985, No. 774, § 6: July 3, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly that under federal law, the state must institute a program providing for the regulation of the

harvesting and exportation of ginseng from the state or the federal government will prohibit all exportation of ginseng from the state; that in 1979, the General Assembly enacted legislation charging the State Forestry Commission with responsi-

bility of regulating the harvesting and sale of ginseng; that it is now determined that it is more appropriate that such authority and responsibility be vested in the State Plant Board; that this act is designed to vest authority and responsibility regarding ginseng in the State Plant Board and that to assure the smooth, effective and efficient transfer of the authority from the Forestry Commission to the State Plant Board and to enable the

State Plant Board to promulgate appropriate rules and regulations to carry out the purpose and intent of this act, it is desirable that this act be effective beginning July 1, 1985. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

2-20-701. Authority to regulate.

Effective July 1, 1985, the State Plant Board shall have the authority and responsibility to regulate the harvesting, sale, artificial propagation, and exportation of *Panax quinquefolius*, referred to in this subchapter as "ginseng".

History. Acts 1985, No. 774, § 1; A.S.A. 1947, § 77-140.

2-20-702. Rules and regulations.

(a) The State Plant Board is authorized and directed to promulgate appropriate rules and regulations to enable it to effectively and efficiently carry out its responsibilities under this subchapter.

(b) Regulations shall include, but shall not be limited to:

(1) Requirement of annual certification and registration of ginseng dealers and exporters;

(2) Requirement that ginseng dealers and exporters maintain records of all their purchases and sales of ginseng;

(3) The establishment of a limited ginseng harvesting season designed to promote and assure the survival of wild American ginseng in the state;

(4) Requirement to obtain a permit or certificate from the board by any person desiring to artificially propagate ginseng and to provide for the inspection of cultivated ginseng and ginseng nurseries in the state; and

(5) A requirement that a certificate of legal taking be attached to all ginseng exported from the state.

History. Acts 1985, No. 774, § 2; A.S.A. 1947, § 77-141.

2-20-703. Research program.

The State Plant Board shall cause to be initiated and maintained such continuing research program concerning ginseng in Arkansas as it

may deem necessary or appropriate to promote and assure the continued health and survival of wild American ginseng in the state.

History. Acts 1985, No. 774, § 3; A.S.A. 1947, § 77-142.

2-20-704. Dealer license — Fee.

- (a) Each person or entity desiring to engage in business as a ginseng dealer in this state shall annually make application for and obtain a license to do so from the State Plant Board.
- (b) The annual license fee for a ginseng dealer license shall be fifty dollars (\$50.00), which shall accompany the application for the license.

History. Acts 1985, No. 774, § 4; A.S.A. 1947, § 77-143.

2-20-705. Artificial propagation fee.

- (a) A fee of twenty-five dollars (\$25.00) shall be assessed persons artificially propagating ginseng for sale.
- (b) The fee will be assessed annually and will accompany the request for nursery certification.

History. Acts 1985, No. 774, § 4; A.S.A. 1947, § 77-143.

SUBCHAPTER 8 — CORN AND GRAIN SORGHUM PROMOTION

- SECTION.
- 2-20-801. Purpose.
 - 2-20-802. Penalties.
 - 2-20-803. Applicability of subchapter.
 - 2-20-804. Arkansas Corn and Grain Sorghum Promotion Board.

- SECTION.
- 2-20-805. Powers and duties — Assessments — Buyers' records.
 - 2-20-806. Research and extension program.

A.C.R.C. Notes. References to "this chapter" in subchapters 1-7 may not apply to this subchapter which was enacted sub-

sequently.

Effective Dates. Acts 1997, No. 271, § 10: July 1, 1997.

2-20-801. Purpose.

The purpose of this subchapter is to promote the growth and development of the corn and grain sorghum industry in Arkansas by research, extension, promotion, and market development, thereby promoting the general welfare of the people of Arkansas.

History. Acts 1997, No. 271, § 1.

2-20-802. Penalties.

(a)(1) Any buyer who fails to file a report or pay any assessment within the required time set by the Director of the Department of Finance and Administration shall forfeit to the director a penalty of five percent (5%) of the assessment determined to be due plus one percent (1%) for each month of delay, or fraction of a month, after the first month after the report was required to be filed or the assessment became due.

(2) The penalty shall be paid to the director and shall be disposed of by him or her in the same manner as funds derived from the payment of the assessment imposed in this subchapter.

(b) The director shall collect the penalty levied in this section, together with the delinquent assessment, by any or all of the following methods:

(1) Voluntary payment by the person liable;

(2) Legal proceedings instituted in a court of competent jurisdiction;
or

(3) Injunctive relief to enjoin any buyer owing the assessment or penalty, or both, from operating his or her business or engaging in business as a buyer of corn or grain sorghum until the delinquent assessment or penalty, or both, is paid.

(c) Any person required to pay the assessment provided for in this subchapter who refuses to allow full inspection of the premises or any book, record, or other document relating to the liability of the person for the assessment imposed by this subchapter or who shall hinder or in any way delay or prevent the inspection shall be guilty of a violation and upon conviction shall be punished by a fine not exceeding five hundred dollars (\$500).

History. Acts 1997, No. 271, § 4; 2005, No. 1994, § 17.

substituted "or" for "and" in (b)(2); and substituted "violation" for "misdemeanor" in (c).

Amendments. The 2005 amendment

2-20-803. Applicability of subchapter.

The provisions of this subchapter shall not apply to any person who purchases one thousand (1,000) or less bushels of corn or grain sorghum in any calendar year.

History. Acts 1997, No. 271, § 5.

2-20-804. Arkansas Corn and Grain Sorghum Promotion Board.

(a)(1) The Arkansas Corn and Grain Sorghum Promotion Board is created and domiciled in Little Rock, Arkansas, 10720 Kanis Road, and is composed of seven (7) producer members appointed by the Governor as provided in this subsection.

(2) All of the seven (7) producer members of the board shall be practical producers of corn or grain sorghum in the State of Arkansas and shall be nominated by their respective organizations.

(3) Within ten (10) days following July 1, 1997, each of the following organizations, namely, the Arkansas Farm Bureau Federation, Inc., Riceland Foods, and the Agricultural Council of Arkansas, shall submit the names of five (5) practical corn or grain sorghum producers to the Governor, and he or she shall appoint three (3) members from the list submitted by the Arkansas Farm Bureau Federation, and two (2) members from the lists submitted by each of the other above-named organizations to serve on the board.

(4) The members selected as provided in this section from the Arkansas Farm Bureau Federation, shall draw lots to determine their terms so that two (2) of the members will serve for terms of two (2) years and one (1) shall serve for a term of one (1) year, and the members from each of the other organizations shall draw lots for terms so that one (1) shall serve for a term of one (1) year and one (1) shall serve for a term of two (2) years. Thereafter, each member selected shall serve for a term of two (2) years and until his or her successor is duly selected as provided in this section.

(5) Each year thereafter not less than thirty (30) days prior to the expiration of the terms of the current board members whose terms expire, the organizations named in subdivision (a)(3) of this section shall submit to the Governor names of two (2) nominees named for each position to be filled on the board from the respective organizations, and the Governor shall appoint from each list of nominees the new member or members.

(b)(1) The members of the board shall meet and organize immediately after their appointment and shall elect a chair, a vice chair, and a secretary-treasurer from the membership of the board, whose duties shall be those customarily exercised by the officers or specifically designated by the board.

(2) The board may establish rules and regulations for its own government and for the administration of affairs of the board.

(c) The resident agent of the board shall be the executive vice president of the Arkansas Farm Bureau Federation, or his or her designee.

History. Acts 1997, No. 271, § 2.

2-20-805. Powers and duties — Assessments — Buyers' records.

(a)(1) The Arkansas Corn and Grain Sorghum Promotion Board shall appoint three (3) corn or grain sorghum producers from each county who will be responsible for holding a referendum in the county.

(2) The board will set the dates for the referendum and prescribe procedures to be followed in conducting the referendum.

(3) Voting shall be in farm service agency offices under supervision of the three (3) producers appointed to hold the referendum.

(4) Ballots will be furnished by the board.

(5) The results shall be certified not more than three (3) days after election on forms furnished by the board by registered mail to the board.

(6) The board shall be reimbursed from funds collected for costs of holding the referendum.

(b)(1) There is imposed and levied an assessment at the rate of one cent (1¢) per bushel on all corn and grain sorghum grown within the state.

(2) This assessment is to be deducted from the amount paid the producer at the first point of sale, whether within or without the state or at the point the corn or grain sorghum enters into the United States Department of Agriculture loan program. However, the assessment shall not be imposed unless and until:

(A) The question of its imposition has been submitted to and approved by sixty percent (60%) of the corn and grain sorghum producers who vote in the referendum to be called and held within nine (9) months following July 1, 1997; and

(B) A minimum of ten percent (10%) of the total corn and grain sorghum producers in this state as determined by latest available agricultural census data shall have voted.

(3) The corn and grain sorghum producers shall be notified by the board of the results of the referendum.

(4) The assessment imposed in this section shall be effective beginning July 1, 1998.

(5) This assessment may be extended for an indefinite period of time or until twenty percent (20%) of the producers shall petition the board to hold a referendum on whether the program should be continued, then another referendum shall be called by the board in the manner set forth in this section.

(6) In all such referenda, in order to be eligible to vote, the producer must have produced corn or grain sorghum in the crop year immediately preceding the referendum.

(c)(1) The assessment imposed and levied by this section shall be collected by the Director of the Department of Finance and Administration from the buyer of corn or grain sorghum at the first point of sale or when the corn or grain sorghum enters the United States Department of Agriculture loan program.

(2) The proceeds of the assessment, less not more than three percent (3%) to cover the cost of collections, shall be deposited with the Treasurer of State in a special fund to be established for the board to the credit of the board. Disbursement from the special fund shall be made only upon a motion duly passed by the board and presented to the Treasurer of State and only for a purpose prescribed in this subchapter.

(d)(1) Every buyer shall keep a complete and accurate record of all corn and grain sorghum handled by him or her.

(2) The records shall be in such form and contain other information as the board shall by rule or regulation prescribe.

(3) The record shall be preserved for a period of one (1) year and shall be offered for inspection at any time upon written demand by the director or any duly authorized agent or representative of the director.

(4) Every buyer, at such time or times as the director may require, shall submit reports or otherwise document any information deemed necessary for the efficient collection of the assessment imposed in this section.

(5) The director shall have the power to cause any duly authorized agent or representative to enter upon the premises of any buyer of corn or grain sorghum and examine or cause to be examined by the agent any book, paper, and record which deal in any way with respect to the payment of the assessment or enforcement of the provisions of this subchapter.

History. Acts 1997, No. 271, § 3.

2-20-806. Research and extension program.

(a)(1) The Arkansas Corn and Grain Sorghum Promotion Board shall plan and conduct a program of research and extension designed to promote the corn and grain sorghum industry in Arkansas, and the board may use the funds derived from the assessments imposed in this subchapter for these purposes, including basic administration expenses of the plan.

(2) This program may include a program of market development as determined by the board.

(b)(1) Use of these funds may be applied as prescribed in this subchapter within or without the State of Arkansas, including regional, national, and international applications.

(2) The funds may also be used to defray costs of referenda.

History. Acts 1997, No. 271, § 6.

CHAPTER 21
NURSERIES

SECTION.

- 2-21-101. Title.
- 2-21-102. Definitions.
- 2-21-103. Unlawful acts.
- 2-21-104. Penalty.
- 2-21-105. Prosecutions.
- 2-21-106. Rules and regulations.
- 2-21-107. Issuance of licenses.

SECTION.

- 2-21-108. License fees.
- 2-21-109. Expiration of licenses.
- 2-21-110. Denial of license.
- 2-21-111. Invalidation of license.
- 2-21-112. Certification of experts.
- 2-21-113. Disposition of moneys.

Publisher's Notes. Acts 1963, No. 118, § 2, provided that the provisions of the act, which amended numerous sections in this chapter, should not be construed as

limiting the authority conferred upon the State Plant Board by § 2-16-201 et seq., but shall be construed as supplemental thereto.

Effective Dates. Acts 1919, No. 683,
§ 11: effective on passage. Emergency de-
clared. Approved Apr. 3, 1919.

RESEARCH REFERENCES

Am. Jur. 3 Am. Jur. 2d, Agri., § 55.
C.J.S. 3 C.J.S., Agri., § 68.

2-21-101. Title.

This chapter shall be known as the "Arkansas Nursery Fraud Act of 1919".

History. Acts 1919, No. 683, § 1; C. &
M. Dig., § 8002; Pope's Dig., § 12327;
A.S.A. 1947, § 77-401.

2-21-102. Definitions.

As used in this chapter, unless the context otherwise requires:

(1) "Person" means corporations, companies, societies, associations, partnerships, or any individual or combination of individuals. When construing or enforcing the provisions of this chapter, omission or failure of any officer, agent, servant, or other individual acting for or employed by any person, as defined within the scope of his or her employment or office, shall, in every case, be also deemed to be the act, omission, or failure of that person as well as that of the individual himself or herself;

(2) "Nursery stock" means all field-grown florist stock, trees, shrubs, vines, cuttings, grafts, scions, buds, fruitpits, and other seeds of fruit and ornamental trees and shrubs and other plants and plant products for propagation, except field, vegetable, and flower seeds;

(3) "Nursery" means any grounds or premises on or in which nursery stock is propagated and grown for sale, or any grounds or premises on or in which nursery stock is being fumigated, treated, packed, or stored;

(4) "Nurseryman" means the person who owns, leases, manages, or is in charge of a nursery;

(5) "Dealer" means any person, not a grower of nursery stock, who buys nursery stock for the purpose of reselling and reshipping independently of any control of a nursery; and

(6) "Agent" means any person not selling nursery stock under the partial or full control of a nurseryman or of a dealer or other agent. This term shall also apply to any person engaged with a nurseryman, dealer, or agent in handling nursery stock on a cooperative basis.

History. Acts 1919, No. 683, § 2; C. &
M. Dig., § 8003; Pope's Dig., § 12328;
A.S.A. 1947, § 77-402.

CASE NOTES

Cited: Pledger v. Boyd, 304 Ark. 91, 799 S.W.2d 807 (1990).

2-21-103. Unlawful acts.

(a) Without first having qualified, obtained, and having in force a valid license from the State Plant Board to do so, it shall be unlawful for any person, firm, or corporation to:

(1) Engage in, conduct, or carry on the business of selling or dealing in any nursery stock or of importing into this state for sale or distribution any nursery stock;

(2) Act as agent, salesman, or solicitor for any nurseryman or dealer in nursery stock; or

(3) Solicit orders for the purchase of nursery stock.

(b) It shall be unlawful for any person to falsely represent that he or she is the agent, salesman, solicitor, or representative of any nurseryman or dealer in nursery stock.

History. Acts 1919, No. 683, § 4; C. & Pope's Dig., § 12329; Acts 1963, No. 118, M. Dig., § 8005; Acts 1937, No. 203, § 1; § 1; A.S.A. 1947, § 77-403.

2-21-104. Penalty.

Any person who shall violate any provisions or requirements of this chapter or of the rules and regulations made under authority of this chapter shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than fifteen dollars (\$15.00) nor more than five hundred dollars (\$500).

History. Acts 1919, No. 683, § 4; C. & Pope's Dig., § 12329; Acts 1963, No. 118, M. Dig., § 8005; Acts 1937, No. 203, § 1; § 1; A.S.A. 1947, § 77-403.

2-21-105. Prosecutions.

Prosecutions under this chapter shall be commenced by the prosecuting attorney upon evidence furnished by the Director of the State Plant Board.

History. Acts 1919, No. 683, § 9; C. & M. Dig., § 8010; Pope's Dig., § 12331; A.S.A. 1947, § 77-405.

2-21-106. Rules and regulations.

The State Plant Board is authorized to make such reasonable rules and regulations as it may deem necessary for the enforcement of the provisions of this chapter and to prevent violations.

History. Acts 1919, No. 683, § 4; C. & Pope's Dig., § 12329; Acts 1963, No. 118, M. Dig., § 8005; Acts 1937, No. 203, § 1; § 1; A.S.A. 1947, § 77-403.

2-21-107. Issuance of licenses.

(a) All licenses shall be in the name of the person, firm, or corporation licensed and shall show the:

- (1) Purposes for which issued; and
- (2) Name and location of the nursery or place of business of the nurseryman or dealer licensed or represented by the agent, salesman, or solicitor licensed.

(b) No license shall be issued to any agent, salesman, or solicitor unless the nurseryman or dealer represented shall be licensed.

History. Acts 1919, No. 683, § 4; C. & Pope's Dig., § 12329; Acts 1963, No. 118, M. Dig., § 8005; Acts 1937, No. 203, § 1; § 1; A.S.A. 1947, § 77-403.

2-21-108. License fees.

(a) No license shall be issued until the applicant shall have qualified and paid the required fee.

(b)(1) The annual license fee shall be ten dollars (\$10.00) for either a nurseryman or dealer in nursery stock and ten dollars (\$10.00) for each agent, salesman, or solicitor.

(2) Fees for nursery inspections under § 2-16-201 et seq. shall also cover the license fees for nurserymen required under this chapter but shall not be construed to cover the license fees for dealers, agents, salesmen, or solicitors.

History. Acts 1919, No. 683, § 4; C. & Pope's Dig., § 12329; Acts 1963, No. 118, M. Dig., § 8005; Acts 1937, No. 203, § 1; § 1; A.S.A. 1947, § 77-403.

2-21-109. Expiration of licenses.

(a) Licenses shall be issued on an annual basis.

(b) The date of expiration of the licenses shall be set by the State Plant Board in its rules and regulations made pursuant to this chapter.

History. Acts 1919, No. 683, § 4; C. & Pope's Dig., § 12329; Acts 1963, No. 118, M. Dig., § 8005; Acts 1937, No. 203, § 1; § 1; A.S.A. 1947, § 77-403.

2-21-110. Denial of license.

(a) The State Plant Board shall have authority to deny or refuse renewal of a license to any person when it is revealed by investigation or experience that the person does not have a record of financial or moral responsibility.

(b) Any person so denied a license may appeal to the circuit court.

History. Acts 1919, No. 683, § 4; C. & Pope's Dig., § 12329; Acts 1963, No. 118, M. Dig., § 8005; Acts 1937, No. 203, § 1; § 1; A.S.A. 1947, § 77-403.

Cross References. Licenses and permits, removal of disqualification for criminal offenses, § 17-1-103.

2-21-111. Invalidation of license.

(a) Any license issued in accordance with this chapter may be invalidated by the State Plant Board or its authorized representative, after a hearing, for the following reasons:

(1) Substitution by the licensee of varieties or kinds of nursery stock other than those ordered, except by the consent of the purchaser;

(2) Misrepresentations such as making false statements or promises for the purpose of making a sale;

(3) Repeated sales of poor quality, unthrifty, diseased, or insect-infested nursery stock;

(4) Failure to fulfill commitments covered by contracts or neglecting to make adjustments or replacements on nursery stock as by prior agreement;

(5) Violation of any provisions of this chapter or the rules and regulations made under authority of it, or of the provisions of the Arkansas Plant Act of 1917, as amended, § 2-16-201 et seq., or of the rules and regulations made under authority of the Arkansas Plant Act of 1917, as amended.

(b) The licensee may appeal the board's decision within thirty (30) days to the circuit court.

History. Acts 1919, No. 683, § 4; C. & Pope's Dig., § 12329; Acts 1963, No. 118, M. Dig., § 8005; Acts 1937, No. 203, § 1; § 1; A.S.A. 1947, § 77-403.

2-21-112. Certification of experts.

Any person contracting to render expert advice or services regarding horticultural practices as part of the value received in the sale of nursery stock shall be required to:

(1) Furnish satisfactory evidence to the Director of the State Plant Board that he or she is qualified to give expert advice or perform the service; and

(2)(A) Obtain a certificate to that effect, under signature of the director of the board.

(B) A fee of one dollar (\$1.00) shall be required for this certificate.

History. Acts 1919, No. 683, § 7; C. & M. Dig., § 8008; Pope's Dig., § 12330; A.S.A. 1947, § 77-404.

2-21-113. Disposition of moneys.

All moneys collected by the State Plant Board under this chapter shall be deposited and used in the same manner as moneys collected under § 2-16-210.

History. Acts 1919, No. 683, § 10; C. & M. Dig., § 8011; Pope's Dig., § 12332; A.S.A. 1947, § 77-406.

CHAPTER 22**BEEES AND APIARIES**

SECTION.

- 2-22-101. Definitions.
- 2-22-102. Penalty.
- 2-22-103. Prohibited acts.
- 2-22-104. Administration.
- 2-22-105. Rules and regulations.
- 2-22-106. Enforcement.
- 2-22-107. Inspections.

SECTION.

- 2-22-108. Standards for inspectors.
- 2-22-109. Duties of persons engaged in beekeeping.
- 2-22-110. Registration by beekeepers.
- 2-22-111. Transporting of bees.
- 2-22-112. Quarantine.

Effective Dates. Acts 1977, No. 161,
§ 9: July 1, 1977.

2-22-101. Definitions.

As used in this chapter, unless the context otherwise requires:

(1) "Abandoned apiary" means an apiary to which the owner or operator fails to provide such reasonable and adequate attention to each hive during the year as to jeopardize the welfare of neighboring colonies;

(2) "Apiary" means any place where one (1) or more colonies of bees are kept;

(3) "Appliances" means any apparatus, tools, machines, or other devices used in the handling and manipulation of bees, honey, wax, and hives. The term includes containers of honey and wax which may be used in an apiary or in transporting bees and their products and apiary supplies;

(4) "Bees" means any stage of the common honeybee, *Apis mellifera*;

(5) "Bee disease" means American and European foulbrood, sacbrood, bee paralysis, or any other disease or abnormal condition of the egg, larval, pupal, or adult stages of bees;

(6) "Apiary equipment" means hives, supers, frames, veils, gloves, or any other equipment used in the handling and manipulation of bees, honey, wax, and hives;

(7) "Colony" means the bees in any hive including queens, workers, and drones;

(8) "Hive" means a frame hive, box hive, box, barrel, logs, gum skep, or any other receptacle or container, natural or artificial, or any part thereof, which may be used as a domicile for bees;

(9) "Nucleus" means any division or portion of a hive that contains comb;

(10) "Package" means an indefinite number of bees, in a bee-tight container, with or without a queen, without comb;

(11) "Pollination" means the use of bees for the transfer of pollen in the production of agricultural crops;

(12) "Director" means the Director of the Arkansas State Plant Board;

(13) "State Apiarist" means the Director of the Division of Plant Industries of the State Plant Board;

(14) "Section head" means the head of the Apiary Section of the Division of Plant Industries.

History. Acts 1977, No. 161, § 2; A.S.A. 1947, § 78-1726.

2-22-102. Penalty.

Any person violating the provisions of this chapter shall be guilty of a Class C misdemeanor and shall be punished accordingly.

History. Acts 1977, No. 161, § 6; A.S.A. 1947, § 78-1730.

Cross References. Class "C" misdemeanors, §§ 5-1-107, 5-4-201, 5-4-401.

2-22-103. Prohibited acts.

(a)(1) No person shall sell, offer for sale, give away, or otherwise transfer ownership of any bees, colony of bees, or queen bees without first receiving from the State Plant Board a certificate of health issued not more than six (6) months prior to disposition.

(2) A copy of the certificate shall be issued by the seller or given to the purchaser or person receiving the colony at the time of delivery.

(b) It shall be unlawful for any person to give false information or incomplete information in any matter pertaining to this chapter or to resist, impede, or hinder the apiary inspector in the discharge of his or her duties.

History. Acts 1977, No. 161, § 4; 1979, No. 149, § 2; A.S.A. 1947, § 78-1728.

2-22-104. Administration.

The State Plant Board is vested with the authority to carry out the provisions of this chapter through the Director of the State Plant Board, State Apiarist, section head, and deputies.

History. Acts 1977, No. 161, § 1; A.S.A. 1947, § 78-1725.

Publisher's Notes. Acts 1975, No. 455, § 2, provided that, effective July 1, 1975, the State Apiary Board and all its powers, etc., were transferred to the Department of Commerce by a Type 2 transfer and that the only function of the board would be to serve in an advisory capacity to the de-

partment in matters relating to beekeeping.

Acts 1977, No. 161, § 1, provided, in part, that the State Apiary Board was abolished and that all its records, etc., were transferred to the State Plant Board for use in carrying out the provisions of this chapter.

2-22-105. Rules and regulations.

(a) The State Plant Board may promulgate such rules and regulations, not inconsistent with this chapter, as it shall deem necessary for the proper enforcement of this chapter.

(b) Rules and regulations shall be promulgated, issued, and enforced in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

History. Acts 1977, No. 161, § 6; A.S.A. 1947, § 78-1730.

2-22-106. Enforcement.

(a)(1) For the enforcement of this chapter, the apiary inspector shall have, where any apiary is located or any bees, combs, or apiary appliances are kept, the authority to enter upon any private or public premises with right of access, ingress, and egress for the purpose of ascertaining the existence of the disease known as American foulbrood or European foulbrood or any other disease which is infectious or contagious and injurious to bees in their egg, larval, pupal, or adult stages.

(2)(A) Prior to exercising that authority, the inspector must afford the beekeeper the opportunity to be present during the inspection by serving notice of the date and time of inspection at least five (5) days prior to the inspection.

(B) The five-day period may be abbreviated upon the mutual consent of the inspector and the beekeeper.

(b) Beekeepers aggrieved by the actions of an inspector may appeal the inspector's action to the State Plant Board at the board's next meeting.

History. Acts 1977, No. 161, § 4; 1979, No. 149, § 2; A.S.A. 1947, § 78-1728.

2-22-107. Inspections.

(a)(1) Whenever an apiary has been inspected and found apparently free from American foulbrood or other dangerous, contagious, or infectious bee diseases, and all other provisions of this chapter have been complied with, a certificate of inspection shall be issued.

(2) The certificate of inspection shall be valid for a period of one (1) year following the date of its issuance.

(3) A valid certificate of inspection shall be deemed as a blanket permit to move the hives from place to place within the state.

(b) Should, upon inspection or laboratory analysis, any of the diseases described in § 2-22-106(a) be determined to exist in an apiary, it shall be the duty of the State Plant Board to cause the colony to be treated or disinfected or to destroy it, or cause it to be destroyed, by fire, including the hives, frames, honey, wax, and brood.

(c)(1) If an abandoned apiary is found upon inspection to be diseased, the board shall cause it to be immediately destroyed by burning.

(2)(A) An apiary may be considered abandoned only after reasonable attempts have been made to determine ownership.

(B) Attempts to determine ownership are to at least include the questioning of the owner, lessee, or renter of the land on which the apiary is discovered.

(d) After inspection of infected bees or fixtures or after handling diseased bees and before leaving the premises or proceeding to any other apiary, the apiary inspector shall take such measures as shall prevent the spread of the disease by infected material adhering to his or her person or clothing or to any tools or appliances used by him or her which have come in contact with infected materials.

(e) Upon request, additional inspections shall be made by the inspector of bees, colonies of bees, queen bees and their attendants, or hives, supers, or other equipment used in bee culture.

History. Acts 1977, No. 161, § 4; 1979, No. 149, § 2; A.S.A. 1947, § 78-1728.

2-22-108. Standards for inspectors.

The State Plant Board shall establish minimum competency standards for persons to be employed as apiary inspectors. These requirements are to include demonstrated ability to properly handle hives and bees in addition to proficient performance on a written test measuring knowledge pertinent to the job of inspector.

History. Acts 1977, No. 161, § 4; 1979, No. 149, § 2; A.S.A. 1947, § 78-1728.

2-22-109. Duties of persons engaged in beekeeping.

(a)(1) It shall be the duty of all persons engaged in beekeeping to provide movable frames in all hives used by them to contain bees and to cause the bees in the hives to construct brood combs in the frames so that any of the frames may be removed from the hive without injuring other combs in the hive.

(2) Beekeepers shall change newly acquired bees from their natural habitat to hives as soon as possible, but in no case shall a period of more than twelve (12) months elapse between the date of acquiring new bees and transferring them to hives.

(b) Immediately upon detection of disease, anyone keeping bees shall treat and disinfect, or burn and bury in places where they shall remain undisturbed, combs and frames taken from diseased colonies, or, until salvaged, combs and frames shall be placed in tight receptacles so constructed that it shall be impossible for bees to gain access to combs or for honey or any other liquid to leak out where bees can gain access to it.

(c) Anyone exposing combs, honey, frames, empty hives, covers or bottom-boards, or tools, or other appliances contaminated by infected material from diseased colonies shall, upon conviction, be punished as provided in this chapter.

History. Acts 1977, No. 161, § 4; 1979, No. 149, § 2; A.S.A. 1947, § 78-1728.

2-22-110. Registration by beekeepers.

(a)(1)(A) Every person owning, leasing, or possessing bees within ten (10) days after coming into ownership or possession of bees or before moving bees from outside the State of Arkansas, shall file with the State Plant Board an application for registration.

(B) The application shall set forth the exact location by legal description of the premises, together with the name of the owner or possessor of the apiary, the number of colonies of bees in each apiary owned by him or her or in his or her possession or under his or her control, together with such other information as may be required by the board.

(2) The beekeeper may register one (1) location for each ten (10) colonies for the first one thousand (1,000) colonies and may register one (1) location for each twenty (20) colonies thereafter.

(3) A new registration is required when any significant change occurs in the location or operation of the beekeeper.

(4) All applications for registration shall be approved or rejected by the board so as to effectuate compliance with this chapter or rules and regulations promulgated pursuant hereto.

(b)(1) No person can place bees on property other than his or her own within three (3) miles of a previously registered area without the written permission of the registrant.

(2) Upon written complaint made to the board by any beekeeper or any landowner whose land is in the registered area that the registrant or any other person claiming prior bee pasturage rights is not properly covering the area so registered, then the board shall be authorized to permit the placing in such area of other bees or bee yards as, in its judgment, shall be sufficient.

(c)(1)(A) Nonresidents of this state who desire to locate their colonies of bees in Arkansas shall register their bees and the locations they desire as required in subsection (a) of this section.

(B) Registration shall be required annually.

(2) If a nonresident beekeeper fails to place his or her bees in an area registered by him or her during the registration period, the beekeeper shall forfeit his or her rights to that area and shall not be allowed to apply for that area until one (1) year after the forfeiture.

History. Acts 1977, No. 161, § 3; 1979, No. 149, § 1; A.S.A. 1947, § 78-1727.

2-22-111. Transporting of bees.

(a)(1) All bees in used hives or other apiary equipment which may be brought into the state from other states or other countries must be accompanied by a certificate of health issued by the official inspector of the state or country where they had been located.

(2) The transportation of bees in used hives or other apiary equipment into this state without a certificate of health by any person or by common carriers is expressly prohibited.

(b) The certificate of health shall certify to the apparent freedom from foulbrood or any other contagious or infectious bee disease and shall be based on actual inspection of bees and material within ninety (90) days of the date of shipment.

(c)(1) A person transporting bees within the state to a location not previously approved shall notify the State Plant Board of the action at least twenty (20) days before the move.

(2)(A) Under emergency conditions such as fires, crop dusting, and natural disasters, the bees may be moved without prior notice if the board is notified within five (5) days of the move and informed of the circumstances necessitating the emergency move.

(B) No notification shall be required for the movement of disease-free bees between previously registered locations.

History. Acts 1977, No. 161, § 5; 1979, No. 149, § 3; A.S.A. 1947, § 78-1729.

2-22-112. Quarantine.

(a) All apiaries, bees, bee equipment, bee products, buildings, premises, and appliances where or on which American or European foulbrood is known to exist are declared to be under quarantine.

(b)(1) The removal of any and all bees, queen bees, bee products, colonies, nuclei, combs and apiary appliances, and bee fixtures is prohibited except under such cases as the State Plant Board may permit or approve.

(2) The quarantines shall exist until the board shall determine and declare the premises or material is apparently free from American or European foulbrood.

(c) The imposed quarantine shall cease to be in effect if the board has not verified the existence of American or European foulbrood within thirty (30) days after appeal by the beekeeper.

History. Acts 1977, No. 161, § 4; 1979, No. 149, § 2; A.S.A. 1947, § 78-1728.

CHAPTER 23 ARBITRATION OF DEFECTIVE SEED CLAIMS

SECTION.

2-23-101. Definitions.

2-23-102. Prerequisite to legal action —

SECTION.

Notice — Arbitration committee.

SECTION.

- 2-23-103. Seed dealer or labeler may request investigation — Requirements.
- 2-23-104. Arbitration committee — Members.
- 2-23-105. Committee purpose.
- 2-23-106. Committee — Meetings — Informal hearing.

SECTION.

- 2-23-107. Committee — Investigation and report — Findings as evidence.
- 2-23-108. Committee — Investigative powers.
- 2-23-109. Committee records.
- 2-23-110. Notice.

Effective Dates. Acts 1991, No. 1024, §§ 3, 7: July 1, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly that it is essential to the effective administration of this act that the provisions hereof become effective on July 1, 1991; that without an emergency clause, this act might not become effective until after July 1, 1991. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect on and after July 1, 1991."

Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reim-

bursament of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor [sic], it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

RESEARCH REFERENCES

Am. Jur. 4 Am. Jur. 2d, Alt. Desp. Res., § 191.

2 Am. Jur 2d, Admin. Law, § 395 et seq.

Ark. L. Notes. Looney, Bad Seeds Make Bad Law: Is the Seed Arbitration

Act An Obstacle to Recovery in Defective Seed Cases in Arkansas?, 1994 Ark. L. Notes 53.

C.J.S. 6 C.J.S., Arbit., § 1 et seq.

2-23-101. Definitions.

As used in this subchapter:

(1) "Advertisement" means all representations other than those on the label written, recorded, or published and distributed by the labeler;

(2) "Agricultural seed" means the seeds of grass, forage, cereal, oil and fiber crops, and any other kinds of seed commonly recognized within this state as agricultural seeds and mixtures of such seed;

(3) "Arbitration committee" means the committee established by the director under this subchapter to hear and make determinations in mandatory, nonbinding arbitration cases;

(4) "Buyer" means a person who purchases agricultural seeds;

(5) "Chairperson" means the person selected by the arbitration committee from among its members to preside over arbitration hearings;

(6) "Dealer" means any person, individual, partnership, or company who distributes agricultural seeds;

(7) [Repealed.]

(8) "Label" means the display or displays of written, printed, or graphic matter upon or attached to the container of seed or as required by regulations established under the Arkansas Plant Act of 1917, § 2-16-201 et seq.;

(9) "Labeler" means the person, firm, corporation, or the registered code number whose name appears on the label or container of seed;

(10) "Labeling" includes all labels, advertisements, and other written, printed, or graphic representations in any manner whatsoever pertaining to any seed, whether in bulk or in containers, and includes representations on invoices except for current, official publications of the United States Department of Agriculture and the United States Department of Interior, state experiment stations, state agricultural colleges, and other similar federal or state institutions or agencies authorized by law to conduct research;

(11) "Person" means an individual, firm, partnership, corporation, or company; and

(12) [Repealed.]

History. Acts 1991, No. 1024, § 1; **Amendments.** The 2007 amendment 1999, No. 921, § 1; 2007, No. 827, §§ 3, 4. deleted former subdivisions (7) and (12).

2-23-102. Prerequisite to legal action — Notice — Arbitration committee.

(a)(1) When any buyer believes that he or she has been damaged by the failure of agricultural seed to produce or perform as represented by the labeling of the agricultural seed, as a prerequisite to the buyer's right to maintain a legal action against the dealer or labeler and within a reasonable time after the alleged defect or violation becomes apparent, the buyer shall file a written notice of intent to seek arbitration to permit inspection of the crops or plants during the growing season.

(2) A meeting shall be scheduled by the Director of the State Plant Board between the buyer and labeler for the purpose of resolving the dispute, or if the dispute is not resolved, for officially filing the complaint.

(3) The buyer shall make a sworn complaint against the dealer or labeler alleging the damages sustained or to be sustained and file the complaint with the director.

(4) The buyer shall send a copy of the complaint to the labeler by United States registered mail.

(b)(1) A filing fee of two hundred fifty dollars (\$250) plus one dollar (\$1.00) per acre filed on, not to exceed a total of seven hundred fifty dollars (\$750), shall be paid to the director with each complaint filed,

and complaints shall be filed on forms provided by the State Plant Board.

(2) This fee shall be deposited in the Plant Board Fund in the State Treasury and may be used by the director to offset expenses of the investigation.

(c) Within ten (10) days after receipt of a copy of the complaint, the labeler shall file with the director the labeler's answer to the complaint and send a copy of the answer to the buyer by United States registered mail.

(d)(1) However, unless notice of this section is legibly printed or typed on the seed container or on a label affixed to the seed container or printed on the invoice covering bulk seed, the buyer shall not be required to comply with this section as a prerequisite to maintaining a legal action against the dealer or labeler.

(2) A notice in the following form, or some reasonably equivalent language, is sufficient:

“Notice of Mandatory Arbitration

NOTICE: As a prerequisite to maintaining a legal action based upon the failure of seed to which this label is attached to produce as represented, a consumer shall file a sworn complaint with the Director of the State Plant Board within such time as to permit inspection of the crops or plants during the growing season.”

(3) If language setting forth the requirement is not so placed on the seed package, analysis label, or invoice covering bulk seed shipments, the filing and serving of a complaint under this section are not required.

History. Acts 1991, No. 1024, § 2;
1999, No. 921, § 2.

CASE NOTES

Notice Requirement Mandatory.

Complaint to the plant board filed within ten days after defectiveness of seeds became apparent was a condition precedent to a legal action against the

seed manufacturer and farmer's failure to comply with the mandatory notice requirements precluded his or her legal action for damages. *Slusser v. Farm Serv.*, 359 Ark. 392, 198 S.W.3d 106 (2004).

2-23-103. Seed dealer or labeler may request investigation — Requirements.

(a)(1) Any seed dealer or labeler against whom suit is brought in any state or federal court by a buyer who alleges that he or she has been damaged by the failure of seeds purchased from a seed dealer to perform as labeled, may request an investigation by the arbitration committee.

(2) A filing fee of two hundred fifty dollars (\$250) plus one dollar (\$1.00) per acre filed on, not to exceed a total of seven hundred fifty dollars (\$750), shall be paid by the party.

(b) The Director of the State Plant Board shall refer the complaint and the answer to the complaint to the arbitration committee provided in § 2-23-104 for investigation, findings, and recommendations on the matters complained of.

History. Acts 1991, No. 1024, § 2;
1999, No. 921, § 3.

2-23-104. Arbitration committee — Members.

(a)(1)(A) The Director of the State Plant Board shall appoint an arbitration committee composed of six (6) members and six (6) alternate members with one (1) member and one (1) alternate to be appointed upon the recommendation of each of the following:

- (i) The President of the Arkansas Seed Growers Association;
- (ii) The President of the Arkansas Seed Dealers Association;
- (iii) The President of the Arkansas Farm Bureau Federation; and
- (iv) The Director of the Agricultural Council of Arkansas.

(B) Terms for seed grower, seed dealer, farm bureau, and agricultural council members shall be for four (4) years.

(2) The members and alternates shall be confirmed by the Governor.

(3)(A) The Director of the University of Arkansas Agricultural Experiment Station, or his or her designee or alternate, and the Director of the University of Arkansas Cooperative Extension Service, or his or her designee or alternate, shall serve as ex officio members.

(B) Ex officio members shall serve until replaced by their organizations.

(4) Recommending organizations shall submit member recommendations not less than thirty (30) days prior to the expiration day of an expiring term.

(5) Each alternate member shall serve only in the absence of the member for whom he or she is an alternate.

(6) Members of the committee may receive expense reimbursement in accordance with § 25-16-901 et seq.

(b)(1) The committee shall elect a chairperson from its membership and the director, or his or her designee, shall serve as secretary of the committee and shall not vote.

(2) It shall be the duty of the chairperson to conduct all meetings and deliberations held by the committee and to direct all other activities of the committee.

(3) It shall be the duty of the secretary to keep accurate and correct records on all meetings and deliberations and perform other duties for the committee as directed by the chairperson.

History. Acts 1991, No. 1024, § 2;
1997, No. 250, § 5; 1999, No. 921, § 4.

Publisher's Notes. Acts 1991, No. 1024, § 2, provided, in part, that the original committee shall be appointed so that

the Seed Growers Association member shall serve one (1) year, the Seed Dealers Association member shall serve two (2) years and the Farm Bureau member shall serve three (3) years.

2-23-105. Committee purpose.

(a) The purpose of the arbitration committee is to assist agricultural seed buyers and agricultural seed dealers or labelers in determining the facts relating to matters alleged in complaints made by buyers against dealers or labelers. The committee may make rules and regulations to carry out the purposes of this act.

(b) The committee may recommend money damages be paid the buyer as a result of alleged failure of seeds to produce as represented by the labeling of the seed and may also recommend that the seed dealer or labeler reimburse the buyer for the amount of the filing fee paid by the buyer.

History. Acts 1991, No. 1024, § 2; refers to Acts 1999, No. 921, which amended various provisions of this section 1999, No. 921, § 5.

Meaning of "this act". The phrase and §§ 2-23-101 — 2-23-104, 2-23-107, "this act" in subsection (a) of this section and 2-23-108.

2-23-106. Committee — Meetings — Informal hearing.

(a) The arbitration committee may be called into session by the Director of the State Plant Board or upon the direction of the chairperson to consider the matters referred to it by the board.

(b) If the committee determines that an informal hearing should be conducted to allow each party an opportunity to present his or her respective side of the dispute, attorneys may be present at the hearing to confer with their clients, but may not participate directly in the proceedings unless requested to do so by the chairperson of the arbitration committee.

History. Acts 1991, No. 1024, § 2.

2-23-107. Committee — Investigation and report — Findings as evidence.

(a) When the Director of the State Plant Board refers to the arbitration committee any complaint made by a buyer against a dealer or labeler, the committee shall make a full and complete investigation of the matters complained of and at the conclusion of the investigation, report through its secretary the findings and recommendations to the buyer and to the labeler by United States registered mail.

(b)(1) The report of arbitration shall be binding upon all parties to the extent, if any, that they have so agreed:

(A) In any contract governing the sale of the seed; or

(B) Prior to the official filing of arbitration.

(2) In the absence of an agreement to be bound by arbitration, a buyer may commence legal proceedings against a seller or assert such claim, as a counterclaim or defense in any action brought by the seller, at any time after the receipt of the report of arbitration.

(3)(A) In any litigation involving a complaint which has been the subject of arbitration under this section, any party may introduce the

report of arbitration as evidence of the facts found in the report, and the court may give such weight to the committee's findings and conclusions of law and recommendations as to damages and costs as the court may see fit based upon all the evidence before the court.

(B) The court may also take into account any findings of the committee with respect to the failure of any party to cooperate in the arbitration proceedings, including any finding as to the effect of delay in filing the arbitration claim upon the committee's ability to determine the facts of the case.

History. Acts 1991, No. 1024, § 2;
1999, No. 921, § 6.

CASE NOTES

Failure to Timely File Claim.

Complaint to the plant board filed within ten days after defectiveness of seeds became apparent was a condition precedent to legal action against the seed manufacturer and farmer's failure to comply with the mandatory notice require-

ments precluded his or her legal action for damages; farmer knew as early as July 1998 that the seeds were not germinating properly but did not file a complaint with the board until more than five months later. *Slusser v. Farm Serv.*, 359 Ark. 392, 198 S.W.3d 106 (2004).

2-23-108. Committee — Investigative powers.

(a) In conducting its investigation, the arbitration committee may:

(1) Examine the buyer on his or her use of the seed of which he or she complains and the dealer or labeler on his or her packaging, labeling, and selling operation of the seed alleged to be faulty;

(2) Grow to production a representative sample of the alleged faulty seed through the facilities of the state, under the supervision of the Director of the State Plant Board, when such action is deemed by the committee to be necessary;

(3) Hold informal hearings at a time and place directed by the chairperson of the committee upon reasonable notice to the buyer and the dealer or labeler; and

(4) Seek evaluations from authorities in allied disciplines, when deemed necessary.

(b) Any investigation made by less than the whole membership of the committee shall be by authority of a written directive by the chairperson, and the investigation shall be summarized in writing and considered by the committee in reporting its findings and making its recommendations.

History. Acts 1991, No. 1024, § 2;
1999, No. 921, § 7.

2-23-109. Committee records.

The committee shall keep a record of its activities and reports on file in the State Plant Board.

History. Acts 1991, No. 1024, § 2.

2-23-110. Notice.

The consumer and seedsman shall give written notice to the department of the acceptance or rejection of the arbitration committee's recommended terms of settlement within thirty (30) days from the date such recommended terms of settlement are issued by the arbitration committee.

History. Acts 1991, No. 1024, § 2.

CHAPTERS 24-31

[Reserved]

SUBTITLE 3. LIVESTOCK**CHAPTER 32****GENERAL PROVISIONS****SUBCHAPTER.**

1. REGULATION OF ALTERNATIVE LIVESTOCK.
2. ARKANSAS LIVESTOCK AND POULTRY CONTRACT PROTECTION ACT.
3. EQUINE MONITORING.

SUBCHAPTER 1 — REGULATION OF ALTERNATIVE LIVESTOCK**SECTION.**

2-32-101. Alternate livestock.

2-32-101. Alternate livestock.

(a)(1) All creatures of the ratite family that are not indigenous to this state, including, but not limited to, ostriches, emus, and rheas;

(2) All creatures of the cervidae family that are not indigenous to this state, including, but not limited to, deer and elk; and

(3) All creatures of the camelidae family, including, but not limited to, llamas, alpacas, and guanacos are hereby classified as alternate livestock.

(b) Alternate livestock shall be considered farm animals or farm birds and shall be subject to all appropriate laws and regulations relating to farm animals.

History. Acts 1993, No. 377, § 1; 1995, No. 591, § 1.

CASE NOTES

Cited: Phillips v. Town of Oak Grove, 333 Ark. 183, 968 S.W.2d 600 (1998).

SUBCHAPTER 2 — ARKANSAS LIVESTOCK AND POULTRY CONTRACT PROTECTION ACT

SECTION.

2-32-201. Production contracts.

2-32-201. Production contracts.

(a) As used in this section:

(1) “Contractor” shall have its common meaning within the industry and shall include a person or entity who owns livestock or poultry, or both, that are raised or cared for by a grower;

(2) “Grower” shall have its common meaning within the industry and shall include a person engaged in the business of raising and caring for livestock or poultry, or both, in accordance with a production contract, marketing agreement, or other arrangement under which a person raises and cares for livestock or poultry, or both, whether the livestock and poultry are owned by the person or by another person or entity;

(3) “Material risk” means:

(A) The duration of the production contract;

(B) The conditions for the termination of the production contract prior to the designated expiration of the production contract; and

(C) The terms relating to payment to be made to the grower, including, when applicable:

(i) The party liable for condemnations;

(ii) The method for figuring feed conversion ratios;

(iii) The method used to convert condemnations to live weight;

(iv) The per-unit charges for feed and other inputs furnished by the contractor; and

(v) The factors to be used when grouping or ranking growers;

(4) “Production” shall have its common meaning within the industry and shall include raising and caring for livestock or poultry, or both, for processing for human consumption under the terms of a production contract; and

(5) “Production contract” shall have its common meaning within the industry and shall include any written agreement that provides for the raising and care of livestock or poultry, or both, by a grower for processing for human consumption for a contractor.

(b) A production contract shall:

(1) Be written in a readable form and shall be accompanied by a clearly written disclosure statement setting forth the nature of the material risk faced by all growers if the growers enter into the production contract;

(2) Be negotiated, entered into, and executed in an environment free from unfair or deceptive trade practices or other violations of law;

(3) Not prohibit or discourage a grower from associating with other growers to compare production contract terms or to address concerns or problems;

(4) Not prohibit or discourage growers from seeking professional, legal, financial, and agricultural production advice and counsel related to the production contract's terms, obligations, and responsibilities; and

(5)(A) Not deny any party to the production contract the ability to address a dispute in any court of competent jurisdiction.

(B) If after a dispute arises, all parties to the production contract agree, then any dispute arising under the contract may be submitted to arbitration.

(c)(1) Any provision of a production contract that violates a provision of subsection (b) of this section is void and unenforceable.

(2) This subsection shall not affect another provision of a production contract, including a contract or related document, policy, or agreement that can be given effect without the voided provision.

(d)(1) A grower who suffers damages because of a contractor's violation of a provision of subsection (b) of this section may obtain appropriate legal and equitable relief, including, but not limited to, injunctive relief and any damages allowable by Arkansas law.

(2) In a civil action against the contractor, the court may award the prevailing party reasonable attorney's fees and other litigation expenses.

(e) This section applies to a production contract entered into on or after September 1, 2005.

History. Acts 2005, No. 1253, § 1.

SUBCHAPTER 3 — EQUINE MONITORING

SECTION.

2-32-301. Equine monitoring by identification chips.

2-32-301. Equine monitoring by identification chips.

(a)(1) It is found and determined by the General Assembly that:

(A) The Arkansas Livestock and Poultry Commission has been authorized by the United States Department of Agriculture to develop and administer a voluntary equine identification system; and

(B) Embedding a chip for the purpose of identifying an animal can endanger the animal if not properly injected and placed.

(2) Therefore, it is the purpose of this section to establish criteria for persons engaged in the voluntary embedding of chips for equine identification.

(b) The commission shall promulgate rules setting forth training requirements for the voluntary embedding or injecting a chip for purpose of animal identification.

- (c) The commission shall administer training and provide certification upon satisfactory completion.
- (d) The commission shall establish a fine for failure to obtain proper certification prior to embedding or injecting a chip for the purpose of equine animal identification.

History. Acts 2007, No. 1585, § 1.

CHAPTER 33

ARKANSAS LIVESTOCK AND POULTRY COMMISSION

SUBCHAPTER.

- 1. GENERAL PROVISIONS.
- 2. LIVESTOCK DIVISION.
- 3. POULTRY DIVISION.
- 4. OTHER DIVISIONS OR COMMITTEES.

Preambles. Acts 1987, No. 1025, contained a preamble which read: “Whereas, under the existing cooperative agreement between the State of Arkansas and the U.S. Department of Agriculture, the USDA bills Arkansas poultry and egg processors for poultry and egg grading and egg products inspection services performed by both federal and State personnel, collects such charges and remits to the State a portion of the charges collected for services of State personnel; and

“Whereas, under the present law, Act 49 of 1965, the Livestock and Poultry Commission has the authority to enter into cooperative agreements with the USDA whereby the Livestock and Poultry Commission will bill poultry and egg processors for poultry and egg grading and egg products inspection services performed by federal and State graders and inspectors, to collect for such services and to remit a portion to the USDA, and it would appear to be advantageous to both the State of Arkansas and the Arkansas processors of poultry and eggs for the State to become the billing and collecting agency for such services; and

“Whereas, in order for the State to assume the responsibility for such billing and collection, it is necessary that an appropriation be made to the Livestock and Poultry Commission out of which the Department can make payments to the USDA of funds collected for services performed by USDA inspectors and graders, “Now therefore”

Effective Dates. Acts 1987, No. 1025, § 4: Apr. 14, 1987. Emergency clause provided: “It is hereby found and determined by the General Assembly that because of the case *Ricarte v. State*, CR 86-31, a question has arisen over the validity of Act 1216 of the Extended Session of 1976; that this Act is a reenactment of the former law; and that the immediate passage of this Act is necessary to clarify the state of the law on this issue. Therefore, an emergency is hereby declared to exist, and this Act being immediately necessary for the preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval.”

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 2-33-101. Creation of commission.
- 2-33-102. Members.

SECTION.

- 2-33-103. Organization and meetings.
- 2-33-104. Executive director.

SECTION.

- 2-33-105. State Veterinarian.
- 2-33-106. Bonding of employees.
- 2-33-107. Powers and duties generally.
- 2-33-108. Authority to stop vehicles, etc.
- 2-33-109. Rules, regulations, and orders.
- 2-33-110. Violations in interstate movement.
- 2-33-111. Livestock and poultry diagnostic services.
- 2-33-112. Small animal diagnostic services.

SECTION.

- 2-33-113. Disposition of fees, revenues, fines, and penalties.
- 2-33-114. Federal Arkansas Livestock and Poultry Commission Fund.
- 2-33-115. Fees.
- 2-33-116. Livestock and Poultry Fund funds.

A.C.R.C. Notes. References to "this subchapter" in §§ 2-33-101 — 2-33-114 may not apply to § 2-33-115 which was enacted subsequently.

Acts 2005, No. 2125, § 22, provided: "TYPE 2 TRANSFER. Effective July 1, 2005, all duties, functions, records, property, obligations, personnel, and authority to levy and collect diagnostic and laboratory fees, pursuant to Arkansas Code § 2-33-111 and § 2-33-112, for the Springdale Laboratory of the Arkansas Livestock and Poultry Commission are hereby transferred by a Type 2 transfer from the Arkansas Livestock and Poultry Commission to the Division of Agriculture of the University of Arkansas."

Cross References. Allocation of funds for joint county fairs and livestock shows, § 2-36-303.

Effective Dates. Acts 1963, No. 87, § 16: Feb. 27, 1963. Emergency clause provided: "It has been found that notwithstanding the fact that the commission will not have the functions performable by it hereunder until April 1, 1963, it is necessary that immediate action be taken by the governor to appoint, and by the senate to confirm the appointment of, the members of the commission in order that the commission may organize and begin to prepare its plan of operations so that there may be no disruption of service on and after that date, and that only by the immediate operation of this act may such condition be obviated. Therefore, an emergency is hereby declared to exist, and this act being necessary for the preservation of the public peace, health and safety shall take effect and be in full force from and after its passage and approval."

Acts 1963, No. 450, § 10: Mar. 19, 1963. Emergency clause provided: "It has been

found and determined by the General Assembly that services promoting the agriculture industry of Arkansas may be better performed by the state agency delegated this responsibility by, generally, reestablishing this agency and updating pertinent legislation; that such legislation has been proposed to the sixty-fourth General Assembly; that this act is necessary to provide appropriations for the proposed Arkansas Livestock and Poultry Commission; therefore, an emergency is hereby declared to exist, and this act being necessary for the preservation of the public peace, health and safety shall take effect and be in full force from and after its passage and approval."

Acts 1969, No. 633, § 4: May 27, 1969. Emergency clause provided: "It is hereby found and determined by the General Assembly that present livestock inspectors of the Arkansas Livestock and Poultry Commission do not have authority to effect arrests of violators of the sanitary laws relating to livestock and poultry; that many violators of the livestock and poultry sanitary laws are not prosecuted due to the difficulty of apprehending them; and that only by the passage of this act can this situation be remedied. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall become effective from and after its passage and approval."

Acts 1981, No. 770, § 27: July 1, 1981. Emergency clause provided: "It is hereby found and determined by the Seventy-Third General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a

two (2) year period; that the effectiveness of this act on July 1, 1981 is essential to the operation of the agency for which the appropriations of this act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this act beyond July 1, 1981 could work irreparable harm upon the proper administration and providing of essential governmental programs. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1981."

Acts 1981, No. 867, § 5: Mar. 28, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that it is in the best interest of the livestock and poultry industry of this state and the growth of such industry that the Livestock and Poultry Commission be separated from the Department of Commerce; that this act is designed to accomplish the same; that the Livestock and Poultry Commission should be established as an independent agency at the beginning of the next fiscal year; and that unless an emergency is declared this act will not go into effect on July 1, 1981. Therefore, an emergency is hereby declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1983, No. 366, § 27: July 1, 1983. Emergency clause provided: "It is hereby found and determined by the Seventy-Fourth General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this act on July 1, 1983 is essential to the operation of the agency for which the appropriations in this act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this act beyond July 1, 1983 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in

full force and effect from and after July 1, 1983."

Acts 1985, Nos. 150 and 151, § 10: Feb. 19, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly that the Livestock and Poultry Commission is without legislative authority to properly carry out its charge to control, suppress and eradicate livestock and poultry diseases and pests and supervise livestock and poultry sanitary work in this state; that this act is designed to clarify and expand the authority of the commission in the area of disease and should be given effect immediately in order that epidemics of disease in livestock and poultry may be avoided. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1985, No. 302, § 3: Mar. 12, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly that the members of the Livestock and Poultry Commission serve without pay and that the per diem they receive for commission meetings is not adequate; that this act provides a more reasonable amount of per diem and that until this act becomes effective the commissioners will continue to receive an unreasonably low rate or per diem. Therefore, an emergency is hereby declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1985, No. 587, § 4: Mar. 26, 1985. Emergency clause provided: "It is hereby found and determined by the Seventy-Fifth General Assembly, that certain funds which were created by law have become inactive; that such funds are no longer required for financial transactions; and that maintaining these funds on the state's financial records creates unnecessary expenses. Therefore, an emergency is hereby declared to exist, and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1993, No. 1174, § 27: July 1, 1993. Emergency clause provided: "It is hereby found and determined by the Seventy-Ninth General Assembly, that the Consti-

tution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1993 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1993 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1993."

Acts 1995, No. 236, § 34: July 1, 1995. Emergency clause provided: "It is hereby found and determined by the Eightieth General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1995 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1995 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1995."

Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately nec-

essary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor [sic], it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1997, No. 766, § 11: July 1, 1997. Emergency clause provided: "It is hereby found and determined by the Eighty-First General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1997 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1997 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1997."

Acts 1999, No. 1183, § 30: July 1, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1999 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1999 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1999."

2-33-101. Creation of commission.

There is created the Arkansas Livestock and Poultry Commission.

History. Acts 1963, No. 87, § 1; A.S.A. 1947, § 78-301.

Publisher's Notes. Acts 1963, No. 87, § 10, provided, in part, that the State Livestock Sanitary Board and the office of State Veterinarian would be abolished effective April 1, 1963, and all their functions, etc., would be transferred to the Arkansas Livestock and Poultry Commission and that the commission would take over all their records, etc., and all executory contracts, unless disaffirmed.

Acts 1963, No. 87, § 11, provided that effective April 1, 1963 all functions, etc., of the State Board of Finance relating to the development of the livestock industry of Arkansas would be transferred to the commission and that the commission

would take over all executory contracts of the board and all of its instruments in writing that related directly to the development of the livestock and poultry industry of Arkansas.

Acts 1981, No. 867, § 1, provided that the Livestock and Poultry Commission, as created by § 2-33-101 et seq. and as transferred to the Division of Livestock, Poultry, and Agriculture of the Department of Commerce (abolished), was separated from the Department of Commerce and should be an independent agency of state government to function in the same manner it functioned prior to its transfer and that the Division of Livestock, Poultry, and Agriculture was abolished.

2-33-102. Members.

(a) The Arkansas Livestock and Poultry Commission shall consist of seven (7) members who are residents and electors of this state to be appointed by the Governor by and with the advice and consent of the Senate for terms of seven (7) years.

(b) Each congressional district shall be represented by membership on the commission.

(c) The term of office shall commence on January 15 following the expiration date of the preceding term and shall end on January 14 of the seventh year following the year in which the term commenced.

(d) Any vacancies arising in the membership of the commission for any reason other than expiration of the terms for which the members were appointed shall be filled by appointment by the Governor and be effective until the expiration of the terms, subject to the confirmation of the Senate when it is next in session.

(e) Before entering upon his or her duties, each member of the commission shall take, subscribe, and file in the office of the Secretary of State an oath to support the United States Constitution and the Arkansas Constitution and to faithfully perform the duties of the office upon which he or she is about to enter.

(f) Members of the commission shall receive no pay for their services. Members of the commission may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq.

History. Acts 1963, No. 87, §§ 2-5; 1985, No. 302, § 1; A.S.A. 1947, §§ 78-302 1973, No. 725, § 1; 1983, No. 756, § 1; — 78-305; Acts 1997, No. 250, § 6.

Publisher's Notes. The terms of the members of the Arkansas Livestock and Poultry Commission are arranged so that one term expires on January 14 every year.

2-33-103. Organization and meetings.

(a)(1) The Arkansas Livestock and Poultry Commission shall from time to time select from its membership a chairman and a vice chairman.

(2) The executive director shall be ex officio secretary of the commission but shall have no vote on matters coming before it.

(b)(1)(A) The commission shall adopt and may modify rules for the conduct of its business and shall keep a record of its transactions, findings, and determinations, which shall be public.

(B) The rules shall provide for regular meetings and for special meetings at the call of the chairman or the vice chairman if he or she is, for any reason, the acting chairman, either at his or her own instance or upon the written request of at least four (4) members.

(2) A quorum shall consist of not less than four (4) members present at any regular or special meeting, and the affirmative vote of this number shall be necessary for the disposition of any business.

(3)(A) The commission shall meet at such times and places as in each instance may suit the commission's convenience.

(B) All meetings shall be open to the public.

History. Acts 1963, No. 87, § 6; A.S.A. 1947, § 78-306.

2-33-104. Executive director.

(a)(1) The Executive Director of the Arkansas Livestock and Poultry Commission shall be appointed by and serve at the pleasure of the Governor.

(2) The executive director shall be charged with the duty of administering the fiscal provisions of this subchapter and of other laws where the functions, powers, and duties of the state agency are vested in and imposed upon the commission.

(3) The applicable provisions of the General Accounting and Budgetary Procedures Law, § 19-4-101 et seq., and the Arkansas Purchasing Law, § 19-11-201 et seq., as these laws relate to the financial transactions of the commission, shall be fully complied with by the executive director.

(b) The commission may, by resolution duly adopted, delegate to the executive director any of the powers or duties vested in or imposed upon it by law, and these delegated powers or duties may be exercised by the executive director in the name of the commission.

(c) Subject to the availability of funds for the purpose, the executive director shall employ and, within limitations established by the General Assembly, fix the salaries of veterinarians, animal pathologists, bacteriologists, laboratory technicians, livestock, poultry, and egg-

grading inspectors, other personnel, and agents, as the commission shall deem necessary to permit it to effectively carry out the duties imposed upon it by law.

(d)(1) The executive director shall be custodian of all property held in the name of the commission and shall be ex officio disbursing agent of all funds available for its use.

(2)(A)(i) The executive director shall furnish bond to the state, with corporate surety thereon, in the penal sum of twenty-five thousand dollars (\$25,000), conditioned that he or she will faithfully perform his or her duties of employment and properly account for all funds received and disbursed by him or her.

(ii) An additional disbursing agent's bond shall not be required of the executive director.

(B) The bond shall be filed with the Secretary of State, and executed counterparts thereof shall be filed with the Auditor of State.

(C) The premiums on the bond shall be paid with funds made available for the use of the commission.

History. Acts 1963, No. 87, §§ 7, 8; A.S.A. 1947, §§ 78-307, 78-308.

A.C.R.C. Notes. The operation of subsection (c) of this section was suspended by adoption of a self-insured fidelity bond program for public officers, officials and

employees, effective July 20, 1987, pursuant to § 21-2-701 et seq. The subsection may again become effective upon cessation of coverage under that program. See § 21-2-703.

2-33-105. State Veterinarian.

(a)(1) Subject to the approval of the Arkansas Livestock and Poultry Commission, the Executive Director of the Arkansas Livestock and Poultry Commission shall appoint a State Veterinarian.

(2) The State Veterinarian shall be a person who has been granted the degree of Doctor of Veterinary Medicine by a recognized school of veterinary medicine and who holds a current license issued by the Veterinary Medical Examining Board of this state.

(b)(1) The State Veterinarian shall perform such duties as shall from time to time be prescribed by the commission and the executive director.

(2) The commission may, by resolution duly adopted, delegate to the State Veterinarian any of the powers or duties vested in or imposed upon it by law, and these delegated powers or duties may be exercised by the State Veterinarian in the name of the commission.

(c)(1)(A) The State Veterinarian shall furnish bond to the state, with corporate surety thereon, in the penal sum of ten thousand dollars (\$10,000), conditioned that he or she will faithfully perform his or her duties of employment.

(B) The bond shall be filed with the Secretary of State, and executed counterparts thereof shall be filed with the Auditor of State.

(2) The premiums on the bond shall be paid with funds made available for the use of the commission.

History. Acts 1963, No. 87, §§ 7, 8; A.S.A. 1947, §§ 78-307, 78-308.

A.C.R.C. Notes. The operation of subdivision former (d)(2) of this section was suspended by adoption of a self-insured fidelity bond program for public officers,

officials and employees, effective July 20, 1987, pursuant to § 21-2-701 et seq. The subdivision may again become effective upon cessation of coverage under that program. See § 21-2-703.

2-33-106. Bonding of employees.

(a)(1) The Executive Director of the Arkansas Livestock and Poultry Commission may cause any or all employees of the Arkansas Livestock and Poultry Commission to be bonded by corporate surety companies.

(2) The bonds, individual or blanket, shall be in such amounts and contain such conditions as the executive director shall determine.

(3) The bonds shall be filed in the office of the commission.

(b) The premiums on all bonds coming under this section shall be paid with funds made available for the use of the commission.

History. Acts 1963, No. 87, § 8; A.S.A. 1947, § 78-308.

A.C.R.C. Notes. The operation of this section was suspended by adoption of a self-insured fidelity bond program for pub-

lic officers, officials and employees, effective July 20, 1987, pursuant to § 21-2-701 et seq. The subsection may again become effective upon cessation of coverage under that program. See § 21-2-703.

2-33-107. Powers and duties generally.

(a)(1) Full authority for the control, suppression, and eradication of livestock and poultry diseases and pests, and supervision of livestock and poultry sanitary work in this state, is vested in the Arkansas Livestock and Poultry Commission.

(2) Without limiting the generality of subdivision (a)(1) of this section or of the other provisions of this subchapter or of other applicable law, it shall be the function, power, and duty of the commission to administer the applicable provisions of the following laws as they relate to administration by a state agency:

(A) Act 409, approved May 28, 1907;

(B) Act 171, approved March 2, 1945;

(C) Act 396, approved March 21, 1951;

(D) Act 33, approved February 11, 1957;

(E) Act 34, approved February 11, 1957;

(F) Act 154, approved March 5, 1957;

(G) Act 94, approved February 24, 1959;

(H) Act 179, approved March 6, 1959; and

(I) Act 196, approved March 8, 1961.

(b) The commission shall have the authority to:

(1) Enter into cooperative work agreements with the several federal departments and agencies in matters relating to the functions performable by the commission including, but not limited to, general livestock and poultry disease control programs such as brucellosis, tuberculosis, hog cholera, scabies, pullorum, and leucosis;

(2)(A)(i) Receive and expend any moneys arising from federal means, grants, contributions, gratuities, or reimbursements for or on account of any of the functions at any time performable by the commission.

(ii) Unless provisions shall have otherwise been made by the federal agencies furnishing the funds, all moneys shall be deposited in the State Treasury to the credit of the commission if legislative appropriations are, at the time, available for its use.

(B)(i) In the event the Chief Fiscal Officer of the State shall advise the commission that appropriations are not available, the commission shall have the authority to establish one (1) or more accounts in its name in one (1) or more banks and thereafter deposit the moneys to the credit of one (1) or more of the accounts and withdraw the moneys for the purposes for which granted, donated, or received.

(ii) Before any moneys may be so deposited in a bank, the commission shall obtain the written approval of the Chief Fiscal Officer of the State;

(3) Cooperate with similar agencies existing in other states and with the appropriate federal agencies and appropriate other agencies of this state for the purpose of coordinating laws, rules, and regulations governing the interstate movement of livestock and poultry and the products producible therefrom, with the view of safeguarding against animal diseases, insects, and pests and at the same time endeavoring to eliminate interstate trade barriers;

(4) Cooperate with, and receive the cooperation of, all state-supported institutions of higher education in matters of mutual interest relating to the development of the livestock and poultry interests of this state;

(5) Cooperate with the state, district, and county livestock show associations in the promotion and development of the livestock and poultry industry of this state;

(6) Contract and be contracted with; and

(7) Take such other action, not inconsistent with law, as it shall deem necessary or desirable to effectively carry out its duties.

History. Acts 1963, No. 87, §§ 9, 12; A.S.A. 1947, §§ 78-309, 78-312.

Publisher's Notes. As to supplemental nature of 1985 amendment, see § 2-40-201.

The acts referred to in subsection (a) of this section are codified as follows: Acts 1907, No. 409, is codified as §§ 2-40-101 — 2-40-108, 2-40-1003, 2-40-1004, 2-40-1006; Acts 1945, No. 171, is codified as §§ 20-19-201 — 20-19-203; Acts 1951, No.

396, is codified as §§ 2-40-904 — 2-40-906; Acts 1957, No. 33, is codified as §§ 2-40-601 — 2-40-603; Acts 1957, No. 154, is codified as §§ 2-40-701, 2-40-702, but may have been superseded by Acts 1969, No. 220, which is codified as §§ 20-58-201 — 20-58-215; Acts 1959, No. 94 was also superseded by Acts 1969, No. 220; Acts 1959, No. 179, is codified as §§ 2-34-201 — 2-34-212; and Acts 1961, No. 196, is codified as § 2-40-1101.

2-33-108. Authority to stop vehicles, etc.

(a)(1) Livestock inspectors and other employees of the Arkansas Livestock and Poultry Commission designated by the commission shall have the authority to:

(A) Stop vehicles transporting livestock or poultry in the state for purposes of examining:

(i) Livestock being transported in the vehicle;

(ii) The sanitary conditions of the vehicles transporting the livestock; and

(iii) The documents relating to the health of the livestock being transported; and

(B) Make such other inspections as the commission may authorize or direct by administrative rule or regulation to enable it to carry out its responsibilities regarding disease and pest control and eradication.

(2) Livestock inspectors and other designated employees of the commission shall have no authority to stop vehicles transporting poultry unless and until the commission shall have first issued a proclamation declaring that there is an imminent peril of disease or disaster affecting poultry in the state.

(b) If the contents of a vehicle are not in compliance with state or federal laws or regulations, the commission employee shall have the authority to detain the vehicle and order the contents to be unloaded and quarantined at the nearest facility until the contents are brought into compliance.

(c) Such personnel of the commission are further authorized to make arrests or issue citations to appear in court to those parties involved in committing violations of laws and commission regulations designed to control and eradicate diseases in livestock and poultry in the state.

(d) Such employees designated by the commission shall, upon employment, be required to attend and successfully complete a curriculum offered by the Arkansas Law Enforcement Training Academy.

(e) Any person or entity who violates this section shall, upon conviction, be guilty of a Class A misdemeanor.

History. Acts 1969, No. 633, § 1; 1985, No. 150, § 5; 1985, No. 151, § 5; A.S.A. 1947, § 78-321.

Cross References. Brucellosis vaccination program, § 2-40-501 et seq.

2-33-109. Rules, regulations, and orders.

The Arkansas Livestock and Poultry Commission shall have the authority to make, modify, and enforce such rules, regulations, and orders, not inconsistent with law, as it shall from time to time deem necessary to effectively carry out the functions performable by it.

History. Acts 1963, No. 87, § 10; A.S.A. 1947, § 78-310.

§ 10, provided, in part, that all rules, regulations, and orders made by the former State Livestock Sanitary Board

Publisher's Notes. Acts 1963, No. 87,

and Office of State Veterinarian before April 1, 1963, would continue in full force and effect thereafter until modified or rescinded by the Livestock and Poultry Commission.

2-33-110. Violations in interstate movement.

In the interstate movement of any livestock, poultry, or other domestic fowl or in the interstate movement of any product derived from livestock, poultry, or other domestic fowl, it shall be a Class A misdemeanor for any person, firm, or corporation to violate any regulation of the Arkansas Livestock and Poultry Commission.

History. Acts 1959, No. 178, § 1; A.S.A. 1947, § 78-315; Acts 2005, No. 1994, § 191.

Amendments. The 2005 amendment inserted "Class A."

Cross References. Interstate movement of cattle governed exclusively by federal regulations, § 2-35-214. Misdemeanors, § 5-1-107.

2-33-111. Livestock and poultry diagnostic services.

(a) The Arkansas Livestock and Poultry Commission may promulgate rules and regulations concerning services performed by its diagnostic laboratories that pertain to all species of livestock and poultry.

(b)(1) A fee structure may be designed and maintained by the commission for the purpose of defraying the cost of diagnostic services.

(2)(A) The fees collected shall be deposited in the State Treasury as special revenues and shall be credited to the Livestock and Poultry Special Revenue Fund.

(B) Before the close of each fiscal year, the Chief Fiscal Officer of the State shall determine the amount of moneys which will remain at the end of the fiscal year in the account from fees collected under the provisions of this section and shall allow the moneys to be carried forward and made available for the same purposes in the next succeeding fiscal year.

History. Acts 1983, No. 366, § 17; A.S.A. 1947, § 78-331.1; Acts 1995, No. 236, § 25.

A.C.R.C. Notes. Acts 2005, No. 2125, § 22, provided: "TYPE 2 TRANSFER. Effective July 1, 2005, all duties, functions, records, property, obligations, personnel, and authority to levy and collect diagnostic and laboratory fees, pursuant to Ar-

kansas Code § 2-33-111 and § 2-33-112, for the Springdale Laboratory of the Arkansas Livestock and Poultry Commission are hereby transferred by a Type 2 transfer from the Arkansas Livestock and Poultry Commission to the Division of Agriculture of the University of Arkansas."

2-33-112. Small animal diagnostic services.

(a) The Arkansas Livestock and Poultry Commission may promulgate rules and regulations concerning services performed by its diagnostic staff that pertain to small animals such as dogs, cats, and others that are considered to be household or family pets.

(b)(1) A fee structure may be designed and maintained by the commission for the purpose of defraying the costs of these services.

(2) The fees collected shall be deposited in the State Treasury as special revenues and shall be credited to the Livestock and Poultry Special Revenue Fund.

History. Acts 1981, No. 770, § 22; 1985, No. 587, § 1; A.S.A. 1947, § 78-331; Acts 1995, No. 236, § 26.

A.C.R.C. Notes. Acts 2005, No. 2125, § 22, provided: "TYPE 2 TRANSFER: Effective July 1, 2005, all duties, functions, records, property, obligations, personnel, and authority to levy and collect diagnostic and laboratory fees, pursuant to Ar-

kansas Code § 2-33-111 and § 2-33-112, for the Springdale Laboratory of the Arkansas Livestock and Poultry Commission are hereby transferred by a Type 2 transfer from the Arkansas Livestock and Poultry Commission to the Division of Agriculture of the University of Arkansas."

2-33-113. Disposition of fees, revenues, fines, and penalties.

(a) All fees and revenues collected by the Arkansas Livestock and Poultry Commission shall be deposited in the State Treasury as special revenues to be used for the maintenance, operation, and improvement of the commission.

(b) All fines and penalties resulting from arrests made or citations issued by commission enforcement officers shall be distributed as follows:

(1) Eighty percent (80%) to the Treasurer of State to be deposited into the State Treasury as special revenues and credited to the Livestock and Poultry Commission Disease and Pest Control Fund to be used as additional revenues for the operation of the enforcement unit; and

(2) Twenty percent (20%) to the city wherein the violation occurred or, if the violation occurred in an unincorporated area, to the county wherein the violation occurred.

History. Acts 1981, No. 867, § 3; A.S.A. 1947, § 78-332; Acts 1991, No. 403, § 1.

Publisher's Notes. This section may

affect §§ 2-33-114, 2-33-206, 2-33-208, and 2-33-307. It may be affected by §§ 19-5-302(9) and 19-6-301(34).

2-33-114. Federal Arkansas Livestock and Poultry Commission Fund.

(a) There is created in the State Treasury a fund to be known as the "Federal Arkansas Livestock and Poultry Commission Fund".

(b) Federal funds as may be allotted to the Arkansas Livestock and Poultry Commission for maintenance and operation of its Agriculture Marketing Service Program shall be deposited in the fund created in this section.

History. Acts 1963, No. 450, § 8; A.S.A. 1947, § 78-314.

Publisher's Notes. This section may

be affected by §§ 2-33-113, 19-5-302(8), and 19-6-301(34).

2-33-115. Fees.

(a) The following fees shall be assessed by the Livestock and Poultry Commission:

(1) A fee of two dollars (\$2.00) per head collected on all private-ownership cow tests in the state;

(2) A fee of two dollars (\$2.00) per head collected on all horses sold in the state;

(3) On each state, district, and county fair held in the State of Arkansas there shall be levied a four and one half percent (4.5%) surcharge on each paid admission to the fairs, and such levy shall be remitted to the Treasurer of State, who shall deposit the revenues in the State Treasury to the credit of the Livestock and Poultry Special Revenue Fund.

(b) The commission is hereby authorized to promulgate such rules and regulations as are necessary to administer the fees, rates, or charges for services established herein.

History. Acts 1993, No. 1174, § 18; subchapter” in §§ 2-33-101 — 2-33-114 1995, No. 236, § 27. may not apply to this section which was

A.C.R.C. Notes. References to “this enacted subsequently.

2-33-116. Livestock and Poultry Fund funds.

The Executive Director of the Arkansas Livestock and Poultry Commission, with the approval of the Chief Fiscal Officer of the State, may transfer funds from the Livestock and Poultry Equine Infectious Anemia Control Fund to the Livestock and Poultry Fund Account.

History. Acts 1997, No. 766, § 5; 1999, No. 1183, § 24.

SUBCHAPTER 2 — LIVESTOCK DIVISION

SECTION.

2-33-201. Livestock.

2-33-202. Rules and regulations.

2-33-203. Carcass data service.

2-33-204. Feeder pig and feeder calf grading program.

2-33-205. Intergovernmental cooperation.

SECTION.

2-33-206. Funds from carcass data and grading programs.

2-33-207. Spraying of livestock.

2-33-208. Livestock spraying program payments.

Effective Dates. Acts 1963, No. 450, § 10; Mar. 19, 1963. Emergency clause provided: “It has been found and determined by the General Assembly that services promoting the agriculture industry of Arkansas may be better performed by the state agency delegated this responsibility by, generally, reestablishing this

agency and updating pertinent legislations; that such legislation has been proposed to the sixty-fourth General Assembly; that this act is necessary to provide appropriations for the proposed Arkansas Livestock and Poultry Commission; therefore, an emergency is hereby declared to exist, and this act being necessary for the

preservation of the public peace, health and safety shall take effect and be in full force from and after its passage and approval."

Acts 1969, No. 360, § 4: Apr. 7, 1969. Emergency clause provided: "It is hereby found and determined by the General Assembly that the Livestock and Poultry Commission has accumulated a limited amount of funds in the Livestock Spraying Program Fund maintained in banks in this state; that the commission was able to accumulate these moneys because a portion of the cost of maintaining the Livestock Spraying Program had been defrayed by the allocation of personnel and expenses to such program from appropriated funds of the commission; that needed improvements are required to repair the buildings and purchase equipment for the laboratory facilities at the Little Rock and Springdale laboratories of the commission; and that the immediate passage of this act is necessary in order to enable the commission to use surplus moneys accumulated in the Livestock Spraying Program Fund, which were saved by reason of expenditures of other commission moneys in connection with the Livestock Spraying Program, to make such needed repairs and to purchase such additional laboratory equipment. Therefore, an emergency is hereby declared to exist and this act

being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1977, No. 76, § 4: July 1, 1977. Emergency clause provided: "It is hereby found and determined by the General Assembly that the Market News Reporting Service which is currently being administered under the Livestock Marketing Division of the Arkansas Livestock and Poultry Commission is primarily an informational and educational program which is more compatible with the service goals of the University of Arkansas Cooperative Extension Service; that it is the purpose and intent of this act to transfer the authority and responsibility for administering the Market News Reporting Program to the University of Arkansas Cooperative Extension Service and that this transfer of authority and responsibility should be effected at the beginning of the 1977-78 fiscal year, and that in order to assure that this act will become effective on or before July 1, 1977, it is essential that an emergency be declared. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

2-33-201. Livestock.

There is established a Livestock Marketing Division of the Arkansas Livestock and Poultry Commission which shall have the responsibility of administering, under the direction of the commission, the USDA Beef Carcass Data Service and a feeder pig and feeder calf grading program authorized by this subchapter.

History. Acts 1973, No. 454, § 1; 1977, No. 76, § 2; A.S.A. 1947, § 78-322.

2-33-202. Rules and regulations.

The Arkansas Livestock and Poultry Commission shall promulgate such reasonable rules and regulations as it may deem necessary for the enforcement of the provisions of this subchapter.

History. Acts 1973, No. 454, § 9; A.S.A. 1947, § 78-330.

2-33-203. Carcass data service.

(a) The Arkansas Livestock and Poultry Commission is authorized to establish a carcass data service which shall be established in cooperation with the United States Department of Agriculture and shall be in compliance with applicable standards and requirements as prescribed by the United States Department of Agriculture for carcass data services.

(b) The commission shall have the authority to establish a fee rate payment for the carcass data information, which shall be at least equal to United States Department of Agriculture guidelines, but may be increased by the commission when deemed necessary for the conduct of the program.

History. Acts 1973, No. 454, §§ 3, 5;
A.S.A. 1947, §§ 78-324, 78-326.

2-33-204. Feeder pig and feeder calf grading program.

(a) The Arkansas Livestock and Poultry Commission is authorized to establish a feeder pig and feeder calf grading program and shall be empowered to cooperate with the United States Department of Agriculture and other state agencies in this and other states to formulate and establish an "Arkansas Standard" for feeder pigs and feeder calves which shall be equal to or higher than United States Department of Agriculture quality grades as experience would require.

(b)(1)(A) The commission shall be empowered to establish a fee for feeder pig and feeder calf grading services to be charged those livestock producers requesting such service.

(B) The fees may be adjusted from time to time as it may be deemed necessary by the commission to defray the costs of the program.

(2)(A) Any livestock producer failing to pay the fees for service in accordance with the regulations promulgated by the commission shall forfeit the right thereafter to benefit from the service until the passed fees are paid.

(B) All unpaid costs shall be collectible by the commission in the same manner provided by law for collection of delinquent gross receipts taxes.

History. Acts 1973, No. 454, §§ 4, 6;
A.S.A. 1947, §§ 78-325, 78-327.

2-33-205. Intergovernmental cooperation.

(a) The Arkansas Livestock and Poultry Commission is authorized to cooperate with the appropriate federal agencies and the appropriate agencies of this state and other states for the purpose of coordinating laws, rules, and regulations governing market news, carcass data, and graded feeder pig and feeder calf sales, with the view of promoting high quality animal products and information.

(b)(1) The commission may enter in cooperative arrangements with cooperating adjoining states to provide standards of graded sales and cooperative use of graders and news reporters whereby cooperating states may pay a portion of the expenses and salaries of personnel.

(2) The moneys shall be collected and deposited in the Livestock and Poultry Commission Fund.

History. Acts 1973, No. 454, § 8; A.S.A. 1947, § 78-329.

2-33-206. Funds from carcass data and grading programs.

All funds received by the Livestock and Poultry Commission for providing carcass data and feeder pig and feeder calf grading service shall be deposited in the State Treasury. Upon receipt, the Treasurer of State shall monthly credit the funds as nonrevenue receipts to an account to be known as the Livestock and Poultry Commission Fund to be used for salaries, expenses, equipment, maintenance, operation, and administrative expenses of the graded feeder pig or feeder calf program of the division.

History. Acts 1973, No. 454, § 7; A.S.A. 1947, § 78-328.

be affected by §§ 2-33-113, 19-5-302(8), and 19-6-301(34).

Publisher's Notes. This section may

2-33-207. Spraying of livestock.

(a) The Arkansas Livestock and Poultry Commission shall make reasonable and necessary rules and regulations for spraying livestock in this state for the eradication and control of ticks and other livestock pests.

(b)(1)(A) Any person in this state desiring to have livestock sprayed may make application to the commission. Spraying shall be done as soon as possible after application is made, within the limitations of equipment and personnel available to the commission.

(B) A charge of ten cents (10¢) per head of livestock sprayed shall be charged by the commission to cover necessary costs of chemicals, personnel, and maintenance in spraying the livestock.

(2) No livestock shall be sprayed until the owner or person in charge thereof shall sign a statement in writing releasing the commission and the State of Arkansas of any claim or liability for any resulting damage to livestock because of the spraying.

History. Acts 1963, No. 450, § 6; A.S.A. 1947, § 78-313.

2-33-208. Livestock spraying program payments.

(a) The Arkansas Livestock and Poultry Commission is authorized to maintain moneys being held in bank accounts derived from payments received in connection with the Livestock Spraying Program, as autho-

rized by law, in bank accounts, and the commission may deposit future receipts from the program in those accounts in banks in this state.

(b) All of the payments derived from the program on deposit in, or hereafter deposited in, bank accounts as authorized in this section shall be maintained in a fund to be known as the Livestock and Poultry Commission Fund and shall be expended only for the purpose of defraying the costs of materials, supplies, and equipment and other necessary expenses in connection with the program.

History. Acts 1969, No. 360, § 1; A.S.A. 1947, § 78-313.1.

Publisher's Notes. Acts 1969, No. 360, § 1, provided, in part, that the Livestock and Poultry Commission could expend, from moneys previously accumulated in the Livestock Spraying Program Fund, an amount, not to exceed twenty-five thousand dollars (\$25,000), for improving and

repairing buildings and purchasing laboratory equipment at the commission's laboratory facilities and that all other moneys deposited in the fund should be used exclusively for the support of the program.

This section may be affected by §§ 2-33-113, 19-5-302(8), and 19-6-301(34).

SUBCHAPTER 3 — POULTRY DIVISION

SECTION.

- 2-33-301. Division of Markets and Grading.
- 2-33-302. Civil service system.
- 2-33-303. Poultry and egg grading program.
- 2-33-304. Providing of poultry and egg grading services.

SECTION.

- 2-33-305. Intergovernmental cooperation.
- 2-33-306. Agreement with federal department.
- 2-33-307. Poultry and Egg Grading Fund.
- 2-33-308. Overtime compensation.

Preambles. Acts 1975 (Extended Sess., 1976), No. 1216, contained a preamble which read: "Whereas, under the existing cooperative agreement between the State of Arkansas and the U.S. Department of Agriculture, the USDA bills Arkansas poultry and egg processors for poultry and egg grading and egg products inspection services performed by both federal and state personnel, collects such charges and remits to the state a portion of the charges collected for services of state personnel; and

"Whereas, under the present law, Act 49 of 1965, the Department of Commerce-Livestock and Poultry Commission has the authority to enter into cooperative agreements with the USDA whereby the Commerce Department will bill poultry and egg processors for poultry and egg grading and egg products inspection services performed by federal and state graders and inspectors, to collect for such services and to remit a portion to the USDA,

and it would appear to be advantageous to both the State of Arkansas and the Arkansas processors of poultry and eggs for the state to become the billing and collecting agency for such services; and

"Whereas, in order for the state to assume the responsibility for such billing and collection, it is necessary that an appropriation be made to the Department of Commerce-Livestock and Poultry Commission out of which the department can make payments to the USDA of funds collected for services performed by USDA inspectors and graders;

"Now therefore"

Effective Dates. Acts 1975 (Extended Sess., 1976), No. 1216, § 5: Feb. 12, 1976. Emergency clause provided: "It is hereby found and determined by the General Assembly that it would be advantageous to the State of Arkansas and to the poultry and egg processors in the state for the Department of Commerce-Livestock and Poultry Commission to bill such proces-

sors for poultry and egg grading and egg products inspection services performed by both state and federal personnel to collect for all such services and remit a portion thereof to the U.S. Department of Agriculture for services of the federal personnel; that in order to enable the Department of Commerce to perform this function, it is essential that an additional appropriation be made to the department out of which it can make remittances to the U.S. Department of Agriculture for services of federal personnel; that this act is designed to make such appropriation and should be given effect immediately so that the Department of Commerce can commence such billing and remittance program at the earliest possible date. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1989 (1st Ex. Sess.), No. 192, § 32: July 1, 1989. Emergency clause provided: "It is hereby found and determined by the Seventy-Seventh General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1989 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1989 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1989."

2-33-301. Division of Markets and Grading.

There is established a Division of Markets and Grading of the Arkansas Livestock and Poultry Commission which shall have the responsibility of administering, under the direction of the commission, the provisions of "The Arkansas Egg Marketing Act of 1969", § 20-58-201 et seq., as amended, and the Poultry and Egg Grading Program authorized by this subchapter.

History. Acts 1965, No. 49, § 1; A.S.A. 1947, § 78-316.

2-33-302. Civil service system.

(a) All inspectors, graders, supervisors, and other technical personnel employed by the Arkansas Livestock and Poultry Commission in connection with the Poultry and Egg Grading Program authorized in this subchapter shall be employed in job positions under a civil service system established by the commission.

(b) The commission shall identify the job positions subject to civil service coverage as authorized in this section and shall establish rules and regulations applicable to qualifications and tenure under the civil service system.

History. Acts 1965, No. 49, § 4; A.S.A. 1947, § 78-319.

Publisher's Notes. Acts 1965, No. 49, § 4, provided, in part, that all employees

of the federal and state government engaged in the federal-state cooperative poultry grading program in Arkansas at the time of the enactment of this section

would be deemed to meet the necessary civil service qualifications and would be eligible for employment by the Livestock and Poultry Commission in similar positions in the state's cooperative poultry grading program without taking examinations or meeting other requirements as may be prescribed by the commission for civil service coverage for the respective positions.

It further provided that all inspectors, graders, supervisors, and other technical personnel then employed under the federal-state cooperative poultry grading program who were not then members of the Arkansas State Employees' Retirement System would, upon being employed

by the Livestock and Poultry Commission, become members of the retirement system.

All such employees who were employed by the commission on July 1, 1965, would be given prior service credit in the retirement system for all prior service in the federal-state program rendered prior to July 1, 1957, if the persons were employed in the program on that date, and any such employee could apply for and receive credit for services rendered in the federal-state program from July 1, 1957, to July 1, 1965, if they paid to the retirement system fund all necessary contributions at the prescribed rates, with interest, in full on or before December 1, 1965.

2-33-303. Poultry and egg grading program.

The Arkansas Livestock and Poultry Commission is authorized to establish a Poultry and Egg Grading Program in this state which shall be established in cooperation with the United States Department of Agriculture and shall be in compliance with the applicable standards and requirements as prescribed by the United States Department of Agriculture for federal poultry and egg grading purposes.

History. Acts 1965, No. 49, § 1; A.S.A. 1947, § 78-316.

2-33-304. Providing of poultry and egg grading services.

(a)(1) The Arkansas Livestock and Poultry Commission shall promulgate such reasonable rules and regulations for poultry and egg grading in this state as may be necessary for the establishment and enforcement thereof.

(2) The rules and regulations shall be in compliance with the standards and requirements established by the United States Department of Agriculture for poultry and egg grading purposes.

(b) The commission may establish a formula or method of prorating the cost of providing the poultry grading services among the various processors or processing plants using the services.

(c)(1) Poultry and egg grading services shall be provided for only those processors or processing plants who make application, who shall comply with the rules and regulations promulgated by the commission, and who shall pay the cost of the services in accordance with regulations of the commission.

(2)(A) Any poultry or egg processor or egg processing plant failing to pay the cost of the services in accordance with the regulations promulgated by the commission shall forfeit the right to have poultry graded until the costs are paid.

(B) All unpaid costs shall be collectible by the commission in the same manner provided by law for collection of delinquent gross receipts taxes.

History. Acts 1965, No. 49, § 2; A.S.A. 1947, § 78-317.

2-33-305. Intergovernmental cooperation.

The Arkansas Livestock and Poultry Commission is authorized to cooperate with the appropriate federal agencies and the appropriate agencies of this state and other states for the purpose of coordinating laws, rules, and regulations governing the interstate movement of eggs and graded poultry with a view of safeguarding the public health and quality of these products and at the same time endeavoring to eliminate interstate trade barriers.

History. Acts 1965, No. 49, § 5; A.S.A. 1947, § 78-320.

2-33-306. Agreement with federal department.

The Arkansas Livestock and Poultry Commission is authorized to enter into a cooperative agreement with the United States Department of Agriculture whereby the commission will bill poultry and egg processors in Arkansas for poultry and egg grading and egg products inspection services performed by state and federal personnel and will collect charges for these services and remit a portion thereof to the department for the services performed by personnel of the United States Department of Agriculture in accordance with the provisions of §§ 2-33-301 — 2-33-305, 2-33-307, and laws amendatory thereto.

History. Acts 1975 (Extended Sess., 1976), No. 1216, § 1; A.S.A. 1947, § 78-320.1; reen. Acts 1987, No. 1025, § 1.

A.C.R.C. Notes. This section was reenacted by Acts 1987, No. 1025, § 1. Acts 1987, No. 834, provided that 1987 legisla-

tion reenacting acts passed in the 1976 Extended Session should not repeal any other 1987 legislation and that such other legislation would be controlling in the event of conflict.

2-33-307. Poultry and Egg Grading Fund.

(a) All funds received by the Arkansas Livestock and Poultry Commission for providing poultry and egg grading services shall be deposited in the State Treasury. Upon receipt of the funds, the Treasurer of State shall monthly credit them as special revenues to an account to be known as the "Poultry and Egg Grading Fund", to be used for salaries, expenses, equipment, maintenance, operation, and administrative expenses of the Poultry and Egg Grading Program of the commission as provided by law.

(b) All funds collected by the commission from poultry and egg processors for poultry and egg grading and egg products inspection services shall be deposited in the State Treasury as special revenues

and shall be credited to the Poultry and Egg Grading Fund to be used for funding the poultry and egg grading and egg products inspection program and to make payments to the United States Department of Agriculture for poultry and egg grading and poultry products inspection services performed by employees of the United States Department of Agriculture.

History. Acts 1965, No. 49, § 3; 1975 (Extended Sess., 1976), No. 1216, § 2; A.S.A. 1947, §§ 78-318, 78-320.2; reen. Acts 1987, No. 1025, § 2.

A.C.R.C. Notes. Part of this section was reenacted by Acts 1987, No. 1025, § 2. Acts 1987, No. 834, provided that 1987 legislation reenacting acts passed in

the 1976 Extended Session should not repeal any other 1987 legislation and that such other legislation would be controlling in the event of conflict.

Publisher's Notes. This section may be affected by §§ 2-33-113, 19-5-302(8), and 19-6-301(34).

2-33-308. Overtime compensation.

The Arkansas Livestock and Poultry Commission's Poultry and Egg Grading Program is hereby authorized to pay ordinary, customary, and necessary overtime compensation in accordance with rules and regulations promulgated by the Chief Fiscal Officer of the State to those employees, including egg and poultry grader supervisors, engaged in the inspection and grading of eggs and poultry products.

History. Acts 1989 (1st Ex. Sess.), No. 192, § 22.

SUBCHAPTER 4 — OTHER DIVISIONS OR COMMITTEES

SECTION.

2-33-401. [Repealed.]

2-33-401. [Repealed.]

A.C.R.C. Notes. Acts 2007, No. 153, § 3, provided: "The following state agencies are abolished:

"(1) Advisory Board for Perinatal Health Services, created by § 20-7-116;

"(2) Advisory Committee on Educational Access to Technology, created by § 6-16-409;

"(3) Arkansas Classified Personnel Salaries Study Commission, created by § 6-17-808; and

"(4) Arkansas Dairy Committee, created by § 2-33-401."

Publisher's Notes. This section, concerning the Arkansas Dairy Committee, was repealed by Acts 2007, No. 153, § 3. The section was derived from Acts 1997, No. 888, § 1.

CHAPTER 34 BRANDS AND MARKS

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. DIVISION OF BRAND REGISTRY.
3. DROVERS.

RESEARCH REFERENCES

Am. Jur. 4 Am. Jur. 2d, Animals, §§ 8, 9. **C.J.S.** 3A C.J.S., Animals, § 15 et seq.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

2-34-101. Earmark and brand to be recorded.

2-34-102. Age for branding and ear-marking.

2-34-103. Brands or marks of minors.

SECTION.

2-34-104. Record of marks and brands.

2-34-105. Rebranding or remarking purchased stock.

2-34-106. Disputes about earmarks or brands.

Publisher's Notes. This subchapter may be superseded as to cattle, horses, and mules by subchapter 2 of this chapter; however, as to hogs, sheep, or goats, it may still be in effect.

Cross References. County clerk re-

cording when two judicial districts, § 14-15-901.

Fee for recording, § 21-6-406.

Penalty for altering brand of another with intent to steal, § 5-37-502.

2-34-101. Earmark and brand to be recorded.

(a) Every person in this state who has cattle, hogs, sheep, or goats shall have an earmark and brand, and but one (1) of each, and differing from the earmark and brand of his or her neighbors.

(b) The earmark and brand shall be recorded by the clerk of the county court where the cattle, hogs, sheep, or goats shall be.

History. Rev. Stat., ch. 93, § 1; C. & M. Dig., § 333; Pope's Dig., § 348; A.S.A. 1947, § 78-801.

2-34-102. Age for branding and ear-marking.

(a) Cattle shall be marked with the earmark or branded with the brand of the owner on or before twelve (12) months old.

(b) Hogs, sheep, and goats shall be marked with the earmark of the owner on or before they are six (6) months old.

History. Rev. Stat., ch. 93, § 2; C. & M. Dig., § 334; Pope's Dig., § 349; A.S.A. 1947, § 78-802.

2-34-103. Brands or marks of minors.

(a) A minor owning cattle or hogs separate from those of the parent or guardian may have a brand or mark, which shall be recorded.

(b) The parent or guardian shall be responsible for the proper use of the mark and brand of any minor.

History. Rev. Stat., ch. 93, § 6; C. & M. Dig., § 338; Pope's Dig., § 353; A.S.A. 1947, § 78-806.

2-34-104. Record of marks and brands.

(a) It shall be the duty of the clerks of the county courts in each county to keep a well-bound book in which they shall record the marks and brands of each individual who may apply to them for that purpose.

(b) The book shall be subject to the examination of every citizen of the county at all reasonable office hours, free of charge for the examination.

History. Rev. Stat., ch. 58, § 4; C. & M. Dig., § 336; Pope's Dig., § 351; A.S.A. 1947, § 78-804.

2-34-105. Rebranding or remarking purchased stock.

(a) A person purchasing or acquiring cattle or other stock, where he or she brands or marks them with his or her brand or mark after the acquisition of the animals, shall do it in the presence of one (1) or more of his or her neighbors.

(b) The neighbors are authorized to certify to the fact of branding or marking being done, where done, and in what brand or mark the cattle or other stock were previously, and in what brand or mark they were rebranded or remarked.

History. Rev. Stat., ch. 93, § 5; C. & M. Dig., § 337; Pope's Dig., § 352; A.S.A. 1947, § 78-805.

2-34-106. Disputes about earmarks or brands.

If any dispute shall arise about any earmark or brand, it shall be decided by reference to the book of marks and brands kept by the clerk of the county court.

History. Rev. Stat., ch. 93, § 3; C. & M. Dig., § 335; Pope's Dig., § 350; A.S.A. 1947, § 78-803.

SUBCHAPTER 2 — DIVISION OF BRAND REGISTRY

SECTION.

- 2-34-201. Definitions.
- 2-34-202. Penalty.
- 2-34-203. Creation.
- 2-34-204. Rules and regulations.
- 2-34-205. Custody of county brand records.
- 2-34-206. State Brand Book.

SECTION.

- 2-34-207. Notification to registrants.
- 2-34-208. Registration of brands.
- 2-34-209. Brands reserved to state.
- 2-34-210. Sale of book.
- 2-34-211. Book as evidence of ownership.
- 2-34-212. Transfers of registered brands.
- 2-34-213. Brand Registry Fund.

Effective Dates. Acts 1969, No. 361, § 3; Apr. 7, 1969. Emergency clause provided: "It is hereby found and determined by the General Assembly that moneys collected by the Division of Brand Registry of the Arkansas Livestock and Poultry Commission pursuant to the provisions of Act 179 of 1959 — the Livestock Brand Registry Law — are now being mingled with other funds of the Livestock and Poultry Commission and are not being set aside for exclusive use in the support of the Brand Registry Program of the Divi-

sion of Brand Registry as provided by law; and that the immediate passage of this act is necessary in order that such funds may be set aside in a special account within the State Treasury to be used exclusively for the support of the Division of Brand Registry. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

2-34-201. Definitions.

As used in this subchapter:

(1) "Brand" means a permanent identification burned or frozen into the hide of a live animal with a hot iron or hot or frozen chemical in letters, numbers, or figures, each of which is at least three inches (3") in overall length or diameter and is to be considered in relation to its location on the animal;

(2) "Commission" means the Arkansas Livestock and Poultry Commission;

(3) "Director" means that person employed by the Arkansas Livestock and Poultry Commission to administer the provisions of this subchapter;

(4) "Division" means the Division of Brand Registry; and

(5) "Livestock" and "animal" mean any cattle, horse, or mule.

History. Acts 1959, No. 179, § 1; A.S.A. 1947, § 78-807; Acts 1999, No. 14, § 1.

2-34-202. Penalty.

(a) Any person who knowingly places any brand upon any livestock that has not been registered with the Division of Brand Registry or that duplicates a brand that is registered with the division shall be guilty of a Class A misdemeanor.

(b) Duplication shall constitute the use of a similar brand used in any position on the animal designated for use of a registered brand such as the head, neck, shoulder, rib, hip, or breeching.

History. Acts 1959, No. 179, § 4; A.S.A. 1947, § 78-810; Acts 2005, No. 1994, § 192.
Cross References. Misdemeanors, § 5-1-107.

Amendments. The 2005 amendment inserted "Class A" in (a).

2-34-203. Creation.

(a)(1) There is created in the Arkansas Livestock and Poultry Commission a Division of Brand Registry which shall consist of a director and such other personnel as may be necessary to carry out the provisions of this subchapter.

(2) The Director of the Division of Brand Registry in the Arkansas Livestock and Poultry Commission shall be employed by the commission.

(b) The commission shall serve as an adjusting committee in the matter of determining conflicts of brands, and the decision of the committee shall be final.

History. Acts 1959, No. 179, § 2; A.S.A. 1947, § 78-808.

Publisher's Notes. When the Division of Brand Registry was created by Acts 1959, No. 179, it was part of the State

Livestock Sanitary Board, whose functions, etc., were transferred to the Arkansas Livestock and Poultry Commission by Acts 1963, No. 87, § 10.

2-34-204. Rules and regulations.

The Director of the Division of Brand Registry in the Arkansas Livestock and Poultry Commission shall have the authority to prescribe all rules and regulations he or she shall deem necessary to carry out the provisions of this subchapter.

History. Acts 1959, No. 179, § 2; A.S.A. 1947, § 78-808.

2-34-205. Custody of county brand records.

(a) All county brand records of the various counties of the state shall be property of the Division of Brand Registry in the Arkansas Livestock and Poultry Commission, and it shall be unlawful for any county clerk to accept any brand for registry.

(b) The division shall collect all county brand record books and place them in its office and preserve them as public records.

(c) The division shall furnish a record of any brand record in the county record books to any person for a fee of one dollar (\$1.00) per brand.

History. Acts 1959, No. 179, § 3; A.S.A. 1947, § 78-809.

2-34-206. State Brand Book.

(a) The Director of the Division of Brand Registry in the Arkansas Livestock and Poultry Commission shall publish the State Brand Book which shall contain a facsimile of each and every brand and mark that is registered with the Division of Brand Registry in the Arkansas Livestock and Poultry Commission showing the name and address of the owner, together with the pertinent laws, rules, and regulations pertaining to registration and reregistration of brands and marks.

(b) The director, on or before January 1, 1960, and every five (5) years thereafter, will have published the State Brand Book showing all the brands recorded with the division prior to December 1, 1959, and every five (5) years thereafter.

(c) Supplements to the State Brand Book shall be published every three (3) months.

History. Acts 1959, No. 179, §§ 2, 5, 7; A.S.A. 1947, §§ 78-808, 78-811, 78-813.

Publisher's Notes. Acts 1959, No. 179, § 5, provided, in part, that immediately upon receipt of the brand record books for the respective counties, the Director of Brand Registry should notify each holder of a brand that the division was in existence.

Acts 1959, No. 179, § 7, provided, in part, that all brand applications passed upon and approved should be sorted in a systematic manner and published in the first edition of the State Brand Book, which was to be published on or before January 1, 1960.

2-34-207. Notification to registrants.

Prior to publication of any revised State Brand Book, all registered brand owners and assignees in the previous book or supplements thereto shall be notified in writing that their brand has terminated and that the brand must be renewed if the person desires to keep the brand.

History. Acts 1959, No. 179, § 7; A.S.A. 1947, § 78-813.

2-34-208. Registration of brands.

(a) Every person desiring to adopt a brand, or to continue to use a brand, shall make application to the Division of Brand Registry in the Arkansas Livestock and Poultry Commission for the registration of the brand in the manner prescribed in this section.

(b) The division shall prepare a standard form which shall be made available to those persons who desire to apply for a brand.

(c) The applicants shall show a front, rear, left, and right side view of the animals upon which the brand will be eligible for registry.

(d) The brand location shall be designated in the following body regions: head, right jaw, neck, shoulder, rib and right and left jaw, neck, shoulder, rib and neck, right and left hip, thigh and breeching.

(e) The applicant shall select not less than three (3) distinct brands and list them in the preferred order and shall likewise select three (3) locations on the animal and list them in preferred order.

(f) Applications for registration or reregistration shall be properly signed and notarized and accompanied by a fee of five dollars (\$5.00).

(g) A brand, if approved and accepted by the division for registry, shall be of good standing during the five-year period in which it is recorded.

History. Acts 1959, No. 179, §§ 4, 5, 7; A.S.A. 1947, §§ 78-810, 78-811, 78-813.

Publisher's Notes. Acts 1959, No. 179, § 6, provided that, from the effective date of the act until September 1, 1959, the Division of Brand Registry would accept brand registration applications only from persons having brands registered in the county brand books. It also provided that,

from September 1 until December 1, 1959, the division would accept applications from any persons desiring to register brands and that the division would check the applications immediately for conflicts and, if found, return the fee advanced along with the application to the applicant.

2-34-209. Brands reserved to state.

(a) There is reserved to the state the brands of "B" and "T" on the left jaw of any cattle, and it shall be unlawful for any person to use them.

(b) Cattle carrying these brands shall be claimed as reactors to Brucellosis abortus, known as bangs disease, and tuberculosis, known as T.B.

History. Acts 1959, No. 179, § 10; A.S.A. 1947, § 78-816.

2-34-210. Sale of book.

(a) The State Brand Book and all supplements thereto, for a five-year period, shall be sold to the public for ten dollars (\$10.00).

(b) Any supplement to any brand book shall be sold at fifty cents (50¢) each.

(c) The county clerk and the sheriff of each county shall receive all brand books and supplements without cost to their respective county.

History. Acts 1959, No. 179, § 8; A.S.A. 1947, § 78-814.

Publisher's Notes. Acts 1959, No. 179, § 8, provided, in part, that the original State Brand Book would sell for five dollars (\$5.00).

2-34-211. Book as evidence of ownership.

(a) Brands appearing in the current edition of the State Brand Book or supplements thereto shall be prima facie evidence of ownership and shall take precedence over brands of like kind should the question of ownership arise.

(b) The owner whose brand does not appear in the State Brand Book or supplement thereto shall produce evidence to establish his or her title to the property in the event of controversy.

History. Acts 1959, No. 179, § 9; A.S.A. 1947, § 78-815.

2-34-212. Transfers of registered brands.

(a)(1) Only brands appearing in the current edition of the State Brand Book and the supplements thereto shall be subject to sale, assignment, transfer, devise, or bequest, the same as other personal property.

(2) The transfer of title must be recorded with the Division of Brand Registry in the Arkansas Livestock and Poultry Commission. The fee for recording it shall be one dollar (\$1.00).

(b)(1) All persons selling livestock branded with their brand recorded in a current edition of the State Brand Book or supplements thereto shall execute a written transfer of ownership to the purchaser.

(2) Should the purchaser suffer any damages due to seller's failure to execute a written transfer of ownership, then the seller shall be liable for any and all damages decided upon by any court of competent jurisdiction.

History. Acts 1959, No. 179, §§ 10, 11; A.S.A. 1947, §§ 78-816, 78-817.

2-34-213. Brand Registry Fund.

All funds collected by the Division of Brand Registry in the Arkansas Livestock and Poultry Commission pursuant to this subchapter shall be deposited monthly in the State Treasury as special revenues, and they shall be credited by the Treasurer of State to the "Brand Registry Fund", which is established by this section, to be used exclusively for the maintenance and operation of the division.

History. Acts 1961, No. 204, § 1; 1969, No. 361, § 1; A.S.A. 1947, § 78-818.

SUBCHAPTER 3 — DROVERS

SECTION.

2-34-301. Penalty.

2-34-302. Duty to brand stock.

2-34-303. Certificate of compliance.

SECTION.

2-34-304. Duty to keep other stock separated.

Cross References. Law governing transportation of livestock, § 2-35-201 et seq.

2-34-301. Penalty.

(a) A willful violation of this subchapter shall be a violation.

(b) At the discretion of the court, an offending party shall upon conviction be fined in any sum not exceeding five hundred dollars (\$500).

History. Acts 1868, No. 29, § 5, p. 101; C. & M. Dig., § 264; Pope's Dig., § 278; A.S.A. 1947, § 78-1005; Acts 2005, No. 1994, § 18.

Amendments. The 2005 amendment substituted "violation" for "misdemeanor" in (a).

2-34-302. Duty to brand stock.

All persons driving horses, mules, asses, cattle, sheep, hogs, or other stock through this state are required to have a mark or brand with which they shall uniformly mark or brand their stock on some conspicuous part of the animals.

History. Acts 1868, No. 29, § 1, p. 101; C. & M. Dig., § 260; Pope's Dig., § 274; A.S.A. 1947, § 78-1001.

2-34-303. Certificate of compliance.

(a) Upon entering the state, drovers shall apply to the Director of the Division of Brand Registry and there record their mark or brand, and, upon the oath or affirmation, of one (1) or more credible witnesses who shall be citizens of the state to the effect that § 2-34-302 has been complied with, the director shall give them a certificate bearing the seal of the state, attested by the director, which must show that the parties have complied with the requirements of this section and § 2-34-302.

(b) A failure to comply with this section shall subject the parties to having their drove detained until they procure the necessary certificate.

History. Acts 1868, No. 29, § 2, p. 101; C. & M. Dig., § 261; Pope's Dig., § 275; A.S.A. 1947, § 78-1002.

2-34-304. Duty to keep other stock separated.

(a)(1) If, in passing through this state, any horses, asses, cattle, sheep, hogs, or other stock should fall in with, or attempt to follow any drove, it shall be the duty of the drover to turn them out or keep them from following.

(2) In no case shall he or she mark, brand, kill, or in any way injure them.

(b)(1) A violation of this section shall be punishable as is prescribed by law for marking, branding, enticing away, or killing stock belonging to another.

(2) If complaint shall be made to any justice of the peace, verified by the affidavit of the complainant, that the drover has violated this

section, he or she shall cause a writ to issue, to be called a writ of detention, which writ may be in the following form, viz:

State of Arkansas,)
)
 County of,)

The State of Arkansas: to the sheriff or any constable of County:

Whereas, complaint has been made to me in writing, and under oath by, that, a drover (here set forth the cause of complaint.) You are, therefore, hereby commanded to summon the aforesaid to appear before me, at my office in said township, on day of, to answer said complaint; and you are hereby commanded to take into possession and detain the drove of cattle (or horses) of the said until otherwise directed by the undersigned:

Herein fail not and make due return of this writ on the of, 19....

..... J. P.

To cause the detention of the drove or other property of the drover and have the stock examined.

(c) The complainant or any other party may recover his or her property, as in any other case, in which event the drover shall pay all costs accruing under this section.

History. Acts 1868, No. 29, §§ 3, 4, p. Dig., §§ 276, 277; A.S.A. 1947, §§ 78-101; C. & M. Dig., §§ 262, 263; Pope's 1003, 78-1004.

CHAPTER 35

MARKETING, SALE, AND TRANSPORTATION

SUBCHAPTER

1. GENERAL PROVISIONS. [RESERVED.]
2. DELIVERING, TRANSPORTING, OR SELLING OF LIVESTOCK.
3. ARKANSAS BEEF COUNCIL.
4. BEEF PROMOTION AND RESEARCH.

RESEARCH REFERENCES

C.J.S. 3 C.J.S., Agri., § 163 et seq.

SUBCHAPTER 1 — GENERAL PROVISIONS

[Reserved]

SUBCHAPTER 2 — DELIVERING, TRANSPORTING, OR SELLING OF LIVESTOCK

SECTION.

- 2-35-201. Applicability.
 2-35-202. Exemptions.

SECTION.

- 2-35-203. Penalty.
 2-35-204. Transfer record.

SECTION.

- 2-35-205. Standard form.
- 2-35-206. Verification of record.
- 2-35-207. Perjury.
- 2-35-208. Filing and acknowledgment of record required.
- 2-35-209. Duplicate of record.
- 2-35-210. Authority to stop and inspect transporting vehicles.

SECTION.

- 2-35-211. Additional requirements for slaughtered or stored animals.
- 2-35-212. Sales within county.
- 2-35-213. Bonding of nonresident poultry purchasers.
- 2-35-214. Interstate movement of cattle.
- 2-35-215. Interstate shipping points.

Cross References. Municipalities may regulate or prohibit street auctions of animals, § 14-54-1104.

Effective Dates. Acts 1923, (1st Ex. Sess.), No. 38 § 4: effective on passage. Emergency declared. Approved Oct. 22, 1923.

Acts 1937, No. 206, § 15: approved Mar. 8, 1937. Emergency clause provided: "The object of this bill being for the better enforcement of the criminal laws, and it being found to be a fact that illegal transportation of all domestic livestock is constantly increasing, and resulting in an alarming loss to the citizenship of the state, in order to preserve the public peace, health and safety of the state an emergency is hereby found to exist, and this bill shall become effective immediately upon its passage."

Acts 1957, No. 227, § 4: approved Mar. 12, 1957. Emergency clause provided: "It has been recognized and declared by the General Assembly that a number of poultry producers in this state have been unable to or had difficulty in collecting for poultry sold to some nonresident processors, distributors and truckers and that this act will assure the producers of poultry payment for their products if the buyer

shall for any reason, including insolvency, fail to make payment therefor. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, safety and welfare shall be in full force and effect from and after its passage."

Acts 1981, No. 770, § 27: July 1, 1981. Emergency clause provided: "It is hereby found and determined by the Seventy-Third General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this act on July 1, 1981 is essential to the operation of the agency for which the appropriations of this act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this act beyond July 1, 1981 could work irreparable harm upon the proper administration and providing of essential governmental programs. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1981."

CASE NOTES

Cited: Eureka Springs Sales Co. v. Ward, 226 Ark. 424, 290 S.W.2d 434 (1956).

2-35-201. Applicability.

Wherever the words "hogs, cattle, horses, sheep, goats, and other livestock" are used in this subchapter, they shall include these animals whether dead or live.

History. Acts 1937, No. 206, § 7; Pope's Dig., § 3234; A.S.A. 1947, § 78-907.

2-35-202. Exemptions.

Nothing in this subchapter shall be construed as to prohibit any person from driving across any county line any horse or mule-drawn conveyance or any animal mentioned in this subchapter, or riding any horse or mule across any county line, the animal being driven or ridden by the owner or one who is legally entitled thereto.

History. Acts 1937, No. 206, § 6; Pope's Dig., § 3233; A.S.A. 1947, § 78-906.

2-35-203. Penalty.

Anyone violating any provision of this subchapter shall be guilty of a Class B misdemeanor.

History. Acts 1937, No. 206, § 14; Pope's Dig., § 3241; A.S.A. 1947, § 78-914; Acts 2005, No. 1994, § 234.

Amendments. The 2005 amendment inserted "Class B" in the first sentence and deleted the former second sentence.

2-35-204. Transfer record.

(a) Any person who desires to deliver or transport, in any manner whatever, any hogs, cattle, horses, or domestic livestock from one (1) county to another within the state, or from one (1) county to another without the state, shall make in triplicate a written transfer record of the transaction before delivering or transporting the livestock.

(b) The transfer record shall contain:

- (1) The date on which delivery is made;
- (2) The name of the seller or deliverer;
- (3) The name of the consignee and address thereof;
- (4) The description of every individual head to be delivered, the description to be made by fleshmark, earmark, and brand, including the approximate individual weight and the sex thereof;
- (5) The date obtained by deliverer or seller; and
- (6) The name and address of the person from whom each individual head was obtained, where the head has not been in the possession of and under the seller's mark and brand for six (6) months.

History. Acts 1937, No. 206, §§ 1, 2; Pope's Dig., §§ 3228, 3229; A.S.A. 1947, §§ 78-901, 78-902.

2-35-205. Standard form.

The Director of the Department of Finance and Administration is directed to prepare a standard form of transfer record to be used in accordance with this subchapter. The form shall contain the information specified in this subchapter and shall contain a space to be used by

officers and toll bridge operators to state the information they are directed to furnish.

History. Acts 1937, No. 206, § 12; Pope's Dig., § 3239; A.S.A. 1947, § 78-912.

2-35-206. Verification of record.

The transfer record shall contain the information as set out in § 2-35-204 and be sworn and subscribed to before any notary public or any other person authorized to take acknowledgments or before any two (2) owners of real property residing in the seller's township, authorized according to law to take acknowledgments, with the oath and subscription to be made by the seller in person.

History. Acts 1937, No. 206, § 3; Pope's Dig., § 3230; A.S.A. 1947, § 78-903.

2-35-207. Perjury.

The law of perjury now in force in the State of Arkansas shall apply to transfer records.

History. Acts 1937, No. 206, § 13; Pope's Dig., § 3240; A.S.A. 1947, § 78-913.

2-35-208. Filing and acknowledgment of record required.

(a)(1) When the transfer record shall have been sworn and subscribed to by the seller and before any of the animals mentioned in this subchapter shall be carried, delivered, or transported across any county line, the original of the transfer record shall be filed by the seller or his or her duly authorized agent with the notary public or other person authorized in this subchapter who took the acknowledgment.

(2) The notary public or other person authorized in this subchapter shall affix his or her name and seal of office, if any, thereto.

(3)(A) The notary public or other person authorized in this subchapter to take acknowledgments shall file, within forty-eight (48) hours after acknowledging the transfer, one (1) copy of the transfer record in the office of the county clerk.

(B) The transfer record shall be subject to inspection by any interested person.

(b) Any person authorized to take acknowledgments under this section failing to file a transfer record as provided in this section shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than twenty-five dollars (\$25.00) nor more than one hundred dollars (\$100).

(c) The notary public or any other person authorized by law to take acknowledgments, or any two (2) owners of real property residing in the seller's township, taking the acknowledgment on a transfer record may

charge a fee of ten cents (10¢) for each transfer record, irrespective of the number of animals contained thereon, and the county clerk may charge a fee of ten cents (10¢) for filing it.

History. Acts 1937, No. 206, §§ 4, 9; Pope's Dig., §§ 3231, 3236; A.S.A. 1947, §§ 78-904, 78-909.

2-35-209. Duplicate of record.

(a) Common carriers, trucks-for-hire, stockyards, and all other persons are prohibited from receiving any hogs, cattle, horses, sheep, goats, and other domestic livestock for transportation, slaughter, or for any other purpose unless the person offering the hogs, cattle, horses, sheep, goats, and other livestock shall deliver to the common carrier, truck-for-hire, stockyards, or to any other persons a duplicate copy of the transfer record. This record shall show the complete information as required by this subchapter and bear the signature and seal of a notary public or any other person authorized by law to take acknowledgments or any two (2) owners of real property residing in the seller's township of the county in which the hogs, cattle, horses, sheep, goats, and other livestock are offered for transportation, slaughter, or for any other purposes.

(b)(1) Common carriers and trucks-for-hire shall comply with the provisions of this subchapter where these animals are to be transported or delivered from one (1) county to another within the state or from one (1) county to outside the state.

(2) Stockyards and all other persons shall comply with the provisions of this subchapter where the animals have been transported or delivered from another county within the state.

History. Acts 1937, No. 206, § 5; Pope's Dig., § 3232; A.S.A. 1947, § 78-905.

2-35-210. Authority to stop and inspect transporting vehicles.

(a)(1) All peace officers and their deputies, revenue department inspectors, highway patrolmen, Department of Arkansas State Police, toll bridge keepers, ferryboat operators, and constables shall have the authority to stop each and every vehicle transporting any of the animals mentioned in this subchapter for the purpose of inspecting the transfer record carried by the operator of the vehicle and to examine the animals in the vehicle.

(2) Any officer making an examination shall make a notation on the transfer record carried by the driver of the vehicle and shall note the date and time of inspection.

(b) If any of the named officers, upon investigation, find that the transfer record covers any different animals than those in the vehicle or find that the stock is being transported without the operator having the transfer record, they shall have the authority and it shall be their duty

to stop the further transportation of the stock by requiring the driver of the vehicle to proceed to the nearest peace officer where the vehicle and stock can be held until the operator of the vehicle obtains a proper transfer record as provided in this subchapter.

History. Acts 1937, No. 206, § 10;
Pope's Dig., § 3237; A.S.A. 1947, § 78-910.

2-35-211. Additional requirements for slaughtered or stored animals.

(a) Every person receiving slaughtered, or for slaughter, or for storage, any animal as defined in this subchapter, in addition to the other requirements set out in this subchapter, shall be required to:

(1)(A) Demand and keep the hide of the animal for the period of twenty-four (24) hours from the date it was received, if it was received dead.

(B) If the animal is received alive, the hide shall be kept for twenty-four (24) hours after slaughter; and

(2) Keep a permanent record which shall show the following:

(A) Date and time of receipt of every animal;

(B) Name and address of person from whom each animal was purchased;

(C) Amount paid;

(D) Mark and brand and brief description of each animal; and

(E) License number and brief description of the truck or conveyance delivering each animal.

(b) The hides and records provided for in this section shall be open to the inspection of any citizen.

(c) Any person, firm, or corporation violating any provisions of this section shall be deemed guilty of a misdemeanor.

History. Acts 1937, No. 206, § 11;
Pope's Dig., § 3238; A.S.A. 1947, § 78-911.

2-35-212. Sales within county.

(a) Whenever any hogs, cattle, sheep, goats, and other livestock are sold for slaughter by anyone within the county and whenever any carcass of any of the named animals is sold by anyone within the county, the seller must make a bill of sale of the animal in duplicate, giving the complete information as contained in § 2-35-204, retaining the duplicate, and delivering the original to the purchaser at the time of delivery of the animal or carcass.

(b) The seller and purchaser shall keep their respective copies of the bill of sale in their permanent files, subject to inspection at all times by any police officer within the state.

History. Acts 1937, No. 206, § 8; Pope's Dig., § 3235; A.S.A. 1947, § 78-908.

2-35-213. Bonding of nonresident poultry purchasers.

(a)(1) Every nonresident poultry processor, distributor, or trucker who customarily purchases any poultry from the producers in this state shall post a bond with the Secretary of State in the amount of ten thousand dollars (\$10,000) with some corporate surety authorized to issue these bonds in this state as surety thereon, to ensure producers of the payment for the poultry if for any reason, including insolvency of the buyer, the buyer shall fail to make payment for the poultry.

(2) The aggregate liability of the surety to all the producers in no event shall exceed the amount of the bond.

(b) Any nonresident person engaging in the business of buying poultry who shall purchase any poultry from the producer in this state without having filed the surety bond required in this section shall be guilty of a misdemeanor. Upon conviction, an offender shall be fined in any sum not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500).

History. Acts 1957, No. 227, §§ 1, 2; A.S.A. 1947, §§ 78-915, 78-916.

2-35-214. Interstate movement of cattle.

The interstate movement of cattle shall be exclusively governed and regulated in accordance and compliance with the rules and regulations of the United States Department of Agriculture.

History. Acts 1981, No. 770, § 20; A.S.A. 1947, § 78-917. ment of livestock or poultry in violation of state regulations, § 2-33-110.

Cross References. Interstate move-

2-35-215. Interstate shipping points.

(a) The state inspector of cattle or other livestock requiring inspection under the rules and regulations of the federal government relating to shippers from the State of Arkansas shall provide shipping points to facilitate convenience and expenses to shippers.

(b)(1) The inspector shall provide shipping points at Little Rock, Pine Bluff, Hot Springs, El Dorado, Hope, DeQueen, Waldron, Danville, Mena, Brinkley, Dermott, Arkadelphia, Batesville, Dumas, Dardanelle, Booneville, Van Buren, Rogers, Perry, Beebe, Monticello, Paris, Star City, Heber Springs, and Elba.

(2) At each of these places, there shall be provided a dipping vat with a federal representative to control, operate, and inspect all animals brought there for inspection.

(c) Counties not being under quarantine regulations may be exempt from the provisions of this section.

History. Acts 1923 (1st Ex. Sess.), No. 38, §§ 1-3.

SUBCHAPTER 3 — ARKANSAS BEEF COUNCIL

- SECTION.
2-35-301. Purpose.
2-35-302. Penalty.
2-35-303. Creation — Members — Organization.
2-35-304. Levy of assessment on cattle.
2-35-305. Collection by purchasers.
2-35-306. Records and reports.

- SECTION.
2-35-307. Inspection of records and regulations.
2-35-308. Disposition of funds.
2-35-309. Program to enhance cattle industry.
2-35-310. Refunds.

Publisher's Notes. Acts 1987, No. 3, which is codified as § 2-35-401 et seq., provides for the collection of the federal assessment of \$1.00 per head on cattle sold in the state for the support of a beef promotion and research program.

Cross References. Powers and duties of the Director of the Department of Finance and Administration and department, § 26-17-201 et seq.

Effective Dates. Acts 1983, No. 160, § 13: Feb. 14, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that this act requires an extended period of time to fully implement; that funds generated by this act for promotion, market development, research, and other activities are needed at the earliest possible date; and that this act is necessary to provide a mechanism for enhancing Arkansas' cattle industry through promotional and developmental projects. Therefore, an emergency is hereby declared to exist and this act being immediately necessary for the efficient and effective implementation of this program shall be in full force and

effect from and after its passage and approval."

Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor [sic], it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

2-35-301. Purpose.

The purpose of this subchapter is to promote the growth and development of the beef cattle industry in Arkansas by research, promotion, and market development and thereby promote the general welfare of the people of Arkansas.

History. Acts 1983, No. 160, § 1; A.S.A. 1947, § 78-1901.

2-35-302. Penalty.

(a)(1) A buyer who fails to file a report or pay any assessment within a required time set by the Director of the Department of Finance and Administration shall forfeit to the director a penalty of five percent (5%) of the assessment determined to be due plus one percent (1%) for each month of delay, or fraction of a month, after the first month after the report was required to be filed or the assessment became due.

(2) The penalty shall be paid to the director and shall be disposed of by him or her in the same manner as funds derived from payment of assessments imposed in this subchapter.

(b) The director shall collect the penalty levied in this section, together with the delinquent assessment, by any or all of the following methods:

(1) Voluntary payment by the person liable;

(2) Legal proceedings instituted in a court of competent jurisdiction;
or

(3) Injunctive relief to enjoin any buyer owing the assessment or penalty from operating his or her business or engaging in business as a buyer of cattle until the delinquent assessment or penalty is paid.

(c) Any person required to pay the assessment provided for in this subchapter who refuses to allow full inspection of the records relating to the liability of the person for the assessment imposed in this subchapter or who shall hinder or in any way delay or prevent inspection shall be guilty of a violation and upon conviction shall be punished by a fine not exceeding five hundred dollars (\$500).

History. Acts 1983, No. 160, § 9; A.S.A. 1947, § 78-1909; Acts 2005, No. 1994, § 19.

Amendments. The 2005 amendment substituted "violation" for "misdemeanor" in (c).

2-35-303. Creation — Members — Organization.

(a) The Arkansas Beef Council is created.

(b)(1) The council shall be composed of seven (7) members appointed by the Governor and confirmed by the Senate as follows:

(A) Three (3) cattle producer members shall represent the Arkansas Cattlemen's Association and shall be appointed from a list of names submitted by the board of directors of that organization;

(B) Three (3) cattle producer members shall represent the Arkansas Cattleman's Association and shall be appointed from a list of names submitted by the board of directors of that organization; and

(C) One (1) member shall be an active Arkansas livestock market operator who shall be appointed from the state at large.

(2) Each year, not less than thirty (30) days prior to the expiration of the terms of the current council members whose terms expire in that year, the organizations named shall submit to the Governor two (2) nominees for each position to be filled on the council from the respective organizations. The Governor shall appoint a succeeding member to the council from each organization's list of nominees.

(3) Each member selected shall serve for a term of three (3) years and until his or her successor is duly selected as provided in this section.

(4) Vacancies in any unexpired term shall be filled by the Governor for the remainder of the unexpired term. The member appointed to fill the vacancy shall represent the same organization as the person whose term is unexpired.

(c) Members of the council shall meet and organize immediately after their appointment and shall elect a chairman, a vice chairman, and a secretary-treasurer from the membership of the council whose duties shall be those customarily exercised by those officers or specifically designated by the council.

(d) The council may establish rules and regulations for its own government and for the administration of the affairs of the council.

History. Acts 1983, No. 160, § 2; A.S.A. 1947, § 78-1902.

Publisher's Notes. Acts 1983, No. 160, § 2, provided, in part: "The Arkansas Beef Council is hereby created to be domiciled in Little Rock, Arkansas, 10720 Kanis Road, to be composed of seven (7) members to be appointed by the Governor and confirmed by the Senate as follows: Three (3) cattle producer members representing the Arkansas Farm Bureau Federation and three (3) cattle producer members representing the Arkansas Cattleman's

Association, to be appointed from lists of names submitted by the board of directors of the respective organizations as herein-after provided, and one (1) member who shall be an active Arkansas livestock market operator who shall be appointed from the State at large."

The terms of the members of the Arkansas Beef Council are arranged so that the terms of one member representing the Arkansas Farm Bureau Federation and one member representing the Arkansas Cattleman's Association expire every year.

2-35-304. Levy of assessment on cattle.

(a)(1) Within ninety (90) days after February 14, 1983, the Arkansas Beef Council shall cause an election to be held on the question of the levy of an assessment of twenty-five cents (25¢) per head on all cattle sold in the state.

(2) The election shall be held at the offices of the county Agricultural Stabilization and Conservation Services in each county in the state.

(3) The council shall set the date for conducting the election in each county, shall furnish ballots for the election, and shall prescribe voting procedures for the election.

(4) Each cattle owner or producer who owned or produced cattle in the year immediately preceding the election may vote in the election.

(b)(1) If a majority of the cattle owners and producers in the state voting at the election vote for the levy of an assessment of twenty-five cents (25¢) per head on cattle sold in the state, the assessment shall be applicable to all sales made on and after a date specified by the council. The date shall not be later than ninety (90) days after certification of the results of the election.

(2) The assessment shall be a continuing levy until either terminated by the council or until another election is held at which a majority of the cattle owners and producers in the state vote against the levy.

(c)(1) When petitions containing the signatures of twenty percent (20%) of the cattle owners and producers in the state, as determined by the latest available agricultural census, are filed with the council requesting that the question of continuing the per-head assessment be submitted to a vote of the cattle owners and producers, the council shall cause an election to be held within ninety (90) days after the filing of the petitions.

(2) The election shall be conducted in the same manner as the initial election held on the question of the levy of the assessment.

(3) If a majority of the owners and producers voting at the election vote against the levy of the assessment, the assessment shall not be levied unless and until the levy is thereafter approved at an election called by the council.

(d) If the federal Beef Promotion and Research Act of 1985 and the administrative orders and rules adopted under it are discontinued for any reason, the assessment of twenty-five cents (25¢) per head of cattle sold in this state shall be reactivated the same as if the national program had never existed, and there is levied without any election an additional assessment of seventy-five cents (75¢) per head of cattle sold in this state to be collected as provided in § 2-35-305 and disposed of as provided in § 2-35-308.

(e)(1) Within ninety (90) days after beginning the collection of the seventy-five-cent assessment, the council shall cause an election to be held on the question of the levy of an assessment of seventy-five cents (75¢) per head on all cattle sold in the state.

(2) The election shall be held in the manner prescribed in subsections (a)-(c) of this section.

(f)(1) If a majority of the cattle owners and producers in the state voting at the election vote for the levy of the additional seventy-five cents (75¢) per head on cattle sold in the state, the assessment shall continue until either terminated by the council or until another election is held at which a majority of the cattle owners and producers in the state vote against the levy.

(2) If a majority of the cattle owners and producers in the state voting at the election vote against the levy of the additional seventy-five cents (75¢) per head on cattle sold in the state, the assessment shall be discontinued and shall not be levied again unless and until the levy is thereafter approved at an election called by the council.

History. Acts 1983, No. 160, § 3; A.S.A. 1947, § 78-1903; Acts 2003, No. 1331, §§ 1, 2.

U.S. Code. The federal Beef Promotion and Research Act of 1985, referred to in (d), is codified as 7 U.S.C. § 2901 et seq.

2-35-305. Collection by purchasers.

(a)(1) The assessment levied pursuant to this subchapter shall be collected by each purchaser of cattle in Arkansas, whether or not the purchaser is a resident of Arkansas.

(2) Each purchaser shall monthly report and remit the assessments collected to the Director of the Department of Finance and Administration at the time, in the manner, and on forms prescribed by the director.

(b) For purposes of this subchapter, purchasers or buyers of cattle shall include, but not be limited to:

(1) Livestock auction markets;

(2) Packers;

(3) Order buyers, who are registered or licensed, buying on order and not through a public market; and

(4) Individual organizations, groups, or firms, in the case of organized sales, special sales, breed association sales, and feeder calf sales.

History. Acts 1983, No. 160, § 4; A.S.A. 1947, § 78-1904.

2-35-306. Records and reports.

(a) The Director of the Department of Finance and Administration is authorized and directed to adopt appropriate rules and regulations regarding records to be kept by cattle buyers and regarding reporting and remittance of the assessment levied in this subchapter and to prescribe forms upon which reports are to be made.

(b) The director may, by regulation, require the reports to contain such information as he or she shall deem necessary or appropriate to assure the proper enforcement of this subchapter and the efficient and effective collection of the assessment levied pursuant to it.

History. Acts 1983, No. 160, § 5; A.S.A. 1947, § 78-1905.

2-35-307. Inspection of records and regulations.

(a) Records maintained by cattle buyers pursuant to the requirements of this subchapter or regulations of the council adopted pursuant to it shall be made available for inspection at any reasonable time upon written request by the Director of the Department of Finance and Administration or any duly authorized agent or representative.

(b) Buyers, at such times as the director may require, shall submit reports or other documents containing information deemed necessary for the efficient collection of the assessment imposed in this subchapter.

(c) The director shall have the power to cause any duly authorized agent or representative to enter at reasonable times upon the premises of buyers of cattle and examine or cause to be examined by the agent any records which may pertain to the payment of the assessment or enforcement of the provisions of this subchapter.

History. Acts 1983, No. 160, § 6; A.S.A. 1947, § 78-1906.

2-35-308. Disposition of funds.

(a) The Director of the Department of Finance and Administration shall deposit all assessments and penalties collected pursuant to this subchapter in the State Treasury.

(b)(1) After deducting three percent (3%) for credit to the Constitutional and Officers Fund and the State Central Services Fund, the Treasurer of State shall credit the remainder to the Arkansas Beef Council Fund, which is created on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State.

(2) All funds so credited to the Arkansas Beef Council Fund shall be used in such manner as the council deems appropriate for:

- (A) Arkansas beef promotion and research;
- (B) The operation and maintenance of the council office; and
- (C) Payment of expenses of the board members in accordance with § 25-16-901 et seq.

History. Acts 1983, No. 160, § 7; A.S.A. 1947, § 78-1907; Acts 1997, No. 250, § 7.

2-35-309. Program to enhance cattle industry.

(a) The Arkansas Beef Council shall plan and conduct or cause to be conducted a program of promotion, market development, research, or related beef activities designed to enhance the cattle industry in Arkansas.

(b)(1) The council is authorized to use the funds derived from the assessment imposed in this subchapter for these purposes, including basic administration expenses of the plan.

(2) Use of these funds may be applied as prescribed in this section within or without the State of Arkansas, including regional, national, and international applications.

(3) The funds may also be used to defray costs of referenda.

History. Acts 1983, No. 160, § 10; A.S.A. 1947, § 78-1910.

2-35-310. Refunds.

Any cattle producer may request and receive a refund of the amount deducted from the sale of his or her cattle if he or she makes a written application with the Director of the Department of Finance and Administration within forty-five (45) days from the date of sale, supported by copies of sales slips signed by the buyer and, if the application is filed before the annual accounting is made of the funds, not later than July 1 each year.

History. Acts 1983, No. 160, § 8; A.S.A. 1947, § 78-1908.

SUBCHAPTER 4 — BEEF PROMOTION AND RESEARCH

SECTION.

2-35-401. Purpose.

2-35-402. Applicability.

2-35-403. Assessment — Conduct of program.

2-35-404. Rules and regulations.

SECTION.

2-35-405. Disposition of funds.

2-35-406. National Beef Promotion Account.

2-35-407. State Beef Promotion Account.

Effective Dates. Acts 1987, No. 3, § 6: Jan. 22, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that it is essential to the best interests of the beef industry in the state that legislation be enacted to comply with and conform to the provisions of the federal law known as the Beef Promotion and Research Act of 1985, and the federal administrative orders and rules issued pursuant to that act, that this act is designed to enable the Arkansas Beef Council to conform to and comply with the federal law and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: "It is hereby found and determined by the Gen-

eral Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor [sic], it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

2-35-401. Purpose.

(a) It is found and determined by the General Assembly that:

(1) The Arkansas law which creates the Arkansas Beef Council authorizes an assessment of twenty-five cents (25¢) per head on all cattle sold in the state;

(2) Since the enactment of the Arkansas law, the United States Congress and the United States Department of Agriculture have established a national beef promotion and research program under which there is an assessment of one dollar (\$1.00) per head on all cattle sold;

(3) Under the national program, a qualified state beef council is authorized to retain fifty cents (50¢) of each one dollar (\$1.00) per head assessment for financing a state beef promotion and research program if authorized by state law;

(4) The one dollar (\$1.00) per head national assessment is currently required to be collected but is subject to a referendum within twenty-

two (22) months after the issuance of the beef promotion and research order by the United States Secretary of Agriculture;

(5) It is essential that appropriate legislation be enacted in Arkansas to provide for the collection of the one dollar (\$1.00) per head assessment and the retention by the state of fifty cents (50¢) of each one dollar (\$1.00) assessment during the interim from the date of the order until the referendum process is completed and thereafter in the event the producers voting at the referendum approve a continuation of the assessment; to further assure that in the event the producers voting at the referendum vote against continuing the one dollar (\$1.00) per head assessment, the present Arkansas law providing for an assessment of twenty-five cents (25¢) per head will be automatically reactivated.

(b) Therefore, it is the intent and purpose of this subchapter to suspend the collection of the twenty-five cents (25¢) per head assessment provided for in § 2-35-301 et seq. and to provide for the collection of the one dollar (\$1.00) per head national assessment levied for beef promotion and research so long as the national program continues in effect, with fifty cents (50¢) of the assessment to be retained for the Arkansas Beef Council, and to provide that if the producers voting at the referendum provided for in the Beef Promotion and Research Act of 1985 and the administrative order issued pursuant thereto vote to discontinue the one dollar (\$1.00) per head national assessment, then the provisions of § 2-35-301 et seq. and the assessment of twenty-five cents (25¢) per head of cattle sold in this state will be reactivated the same as if the national program had never existed.

History. Acts 1987, No. 3, § 1.

U.S. Code. The federal Beef Promotion and Research Act of 1985, referred to in

this section, is codified as 7 U.S.C. § 2901 et seq.

2-35-402. Applicability.

(a)(1) The provisions of this subchapter shall remain in effect so long as the national beef promotion and research program established by the Beef Promotion and Research Act of 1985 and the administrative orders and rules issued pursuant to that act continue in effect.

(2) If the program is terminated as a result of the referendum provided for in that act or for any other reason, the provisions of this subchapter shall expire. Thereafter, the provisions of § 2-35-301 et seq. concerning the levy and collection of an assessment on cattle sold in this state to support the Arkansas Beef Promotion and Research Program shall be enforced.

(b) The provisions of this subchapter shall not repeal or modify the provisions of § 2-35-301 et seq., but the provisions of § 2-35-301 et seq., so far as they relate to the levy and collection of an assessment of twenty-five cents (25¢) per head on cattle sold in this state, shall be suspended until such time as the national beef promotion and research program is terminated.

History. Acts 1987, No. 3, § 5.

Promotion and Research Act, see note to

U.S. Code. As to the federal Beef § 2-35-401.

2-35-403. Assessment — Conduct of program.

(a) The assessment levied pursuant to the national beef promotion and research program in the amount of one dollar (\$1.00) per head of cattle sold shall be collected, reported, and remitted to the Director of the Department of Finance and Administration by the persons, in the manner, and at the times prescribed by the Beef Promotion and Research Act of 1985 and the administrative orders and rules issued pursuant to the provisions of that act.

(b) Records concerning cattle sales and the collection of assessments shall be maintained.

(c) The national beef promotion and research program shall in all respects be conducted in Arkansas in conformity with federal law, orders, and regulations regarding the program so long as the national beef promotion and research program is in effect.

History. Acts 1987, No. 3, § 2.

Promotion and Research Act, see note to

U.S. Code. As to the federal Beef § 2-35-401.

2-35-404. Rules and regulations.

The Director of the Department of Finance and Administration is authorized to adopt appropriate rules and regulations not inconsistent with this subchapter or the federal law, orders, and rules regarding the national beef promotion and research program as he or she may deem necessary to carry out the intent and purposes of, and to assure compliance with, this subchapter and the federal laws, orders, and rules relating to the national beef promotion and research program.

History. Acts 1987, No. 3, § 3.

2-35-405. Disposition of funds.

(a) The Director of the Department of Finance and Administration shall deposit in the State Treasury all funds collected by him or her pursuant to this subchapter and the federal Beef Promotion and Research Act of 1985 and the federal administrative orders and rules issued pursuant to that act. Beginning with funds collected by him or her on and after the first day of the month next following January 22, 1987, the Treasurer of State shall:

(1) Credit to the National Beef Promotion Account fifty cents (50¢) of each one dollar (\$1.00) per head assessment collected;

(2) Deduct three percent (3%) of the remaining funds for credit to the Constitutional Officers Fund and the State Central Services Fund; and

(3) Credit the remainder of these funds to the State Beef Promotion Account.

(b)(1) Funds credited to the National Beef Promotion Account shall be remitted by the Arkansas Beef Council to the Cattlemen's Beef

Promotion and Research Board established in the federal Beef Promotion and Research Act of 1985 in the manner prescribed in that act and in administrative orders and rules issued pursuant to that act.

(2) Funds credited to the State Beef Promotion Account shall be used in such manner as the Arkansas Beef Council deems appropriate for Arkansas beef promotion and research and for the operation and maintenance of the Arkansas Beef Council's office and the payment of expenses of the council members in accordance with § 25-16-901 et seq.

History. Acts 1987, No. 3, § 4; 1997, No. 250, § 8.

U.S. Code. As to the federal Beef Promotion and Research Act, see note to § 2-35-401.

The federal Beef Promotion and Research Act of 1985, referred to in (a) and (b)(1), is codified as 7 U.S.C. § 2901 et seq.

2-35-406. National Beef Promotion Account.

There is created a National Beef Promotion Account in the Arkansas Beef Council Fund.

History. Acts 1987, No. 3, § 4.

2-35-407. State Beef Promotion Account.

There is created a State Beef Promotion Account in the Arkansas Beef Council Fund.

History. Acts 1987, No. 3, § 4.

CHAPTER 36

LIVESTOCK SHOWS AND FAIRS

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. FUNDING GENERALLY.
3. COUNTY AND DISTRICT SHOWS OR FAIRS.

Preambles. Acts 1973, No. 317 contained a preamble which read: "Whereas, the distribution of state funds to county and district fair associations for paying premiums and awards at county fairs has heretofore been made based on that part of the total funds appropriated for the purpose that the population of the county bears to the total population of all counties in which qualifying associations are located irrespective of the size and quality of the fair held in such county and this has resulted in a wide variation in the amounts of state funds received by the various associations and a discrepancy

over the state in the amount an award winner receives for an entry; and

"Whereas, the county and district fairs stand as a medium for the exchange of ideas and methods and should develop on the concept of an agricultural and industrial 'convention' and should provide encouragement and stimulation to the Arkansas agricultural, industrial, and livestock industries; and the state should recognize achievement and provide incentive for improvement in the quality of county fairs by the disbursement of state funds on a graded basis of fair quality;

"Now therefore"

Effective Dates. Acts 1973, No. 317, § 14: Mar. 13, 1973. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present method of disbursing state funds appropriated for the development of agricultural, industrial and livestock industries in the state is based upon the population of the county in which county fairs are held; that it is in the best interests of the state that such funds be disbursed to the participating fairs on the basis of

grade of quality of the fair, thereby recognizing achievement and providing incentive for improvement in the quality of the fairs; and that this act is designed to accomplish this purpose and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.
2-36-101. Grading of fairs.
2-36-102. Exhibitors.

SECTION.
2-36-103. Sale of immoral, lewd, etc., items.

Effective Dates. Acts 1989 (1st Ex. Sess.), No. 192, § 32: July 1, 1989. Emergency clause provided: "It is hereby found and determined by the Seventy-Seventh General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1989 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of

the Regular Session, the delay in the effective date of this Act beyond July 1, 1989 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1989."

2-36-101. Grading of fairs.

- (a) The Arkansas Livestock and Poultry Commission shall be empowered to formulate necessary and appropriate rules and regulations for the grading of fairs on a point system in cooperation with an ad hoc advisory committee formed of representatives of agriculture consisting of representatives from the United States Department of Agriculture, University of Arkansas Cooperative Extension Service, the Office of Agricultural Science and Technology of the Department of Workforce Education, and the Arkansas Fair Managers Association, which shall make recommendations as to criteria for the allotment of grade points to the commission.
- (b) The advisory committee shall determine the entry classifications for which grade points would be allowed and delete from approval such classifications as beauty contests, baby shows, antique shows, skills contests, purchased machinery such as cars and farm equipment, or

other noncreative categories which in their opinion would be nonproductive and not in accord with the concept of an agricultural and industrial convention.

History. Acts 1973, No. 317, §§ 6, 7; A.S.A. 1947, §§ 78-1615, 78-1616; Acts 1999, No. 1323, § 1.

2-36-102. Exhibitors.

An exhibitor shall be a single person who enters a display in the fair. Each unit shall not be construed as an exhibitor, but a person may be counted as an exhibitor in each classification in which he or she has an entry.

History. Acts 1973, No. 317, § 8; A.S.A. 1947, § 78-1617.

2-36-103. Sale of immoral, lewd, etc., items.

Any facilities which house county, district, or state fairs shall prohibit the sale of literature, pictures, clothing, or other materials which are immoral, lewd, obscene, indecent, or offensive. The prosecuting attorney shall be notified of any proposed sales of such material.

History. Acts 1989 (1st Ex. Sess.), No. 192, § 19.

SUBCHAPTER 2 — FUNDING GENERALLY

SECTION.

- 2-36-201. Administration.
- 2-36-202. Premium funds generally.
- 2-36-203. Premium funds for state fair.
- 2-36-204. Division of funds among counties and districts.
- 2-36-205. Use of premium funds.
- 2-36-206. Appropriations for construction and operation.

SECTION.

- 2-36-207. Applications for funds.
- 2-36-208. Bonding of executive officers.
- 2-36-209. Determination of bond and fund amounts.
- 2-36-210. Audits of expenditures.
- 2-36-211. Accounting reports by recipients.

Preambles. Acts 1973, No. 317 contained a preamble which read: "Whereas, the distribution of state funds to county and district fair associations for paying premiums and awards at county fairs has heretofore been made based on that part of the total funds appropriated for the purpose that the population of the county bears to the total population of all counties in which qualifying associations are located irrespective of the size and quality of the fair held in such county and this has resulted in a wide variation in the

amounts of state funds received by the various associations and a discrepancy over the state in the amount an award winner receives for an entry; and

"Whereas, the county and district fairs stand as a medium for the exchange of ideas and methods and should develop on the concept of an agricultural and industrial 'convention' and should provide encouragement and stimulation to the Arkansas agricultural, industrial, and livestock industries; and the state should recognize achievement and provide incen-

tive for improvement in the quality of county fairs by the disbursement of state funds on a graded basis of fair quality;

"Now therefore"

Effective Dates. Acts 1973, No. 317, § 14: Mar. 13, 1973. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present method of disbursing state funds appropriated for the development of agricultural, industrial and livestock industries in the state is based upon the population of the county in which county fairs are held; that it is in the best interests of

the state that such funds be disbursed to the participating fairs on the basis of grade of quality of the fair, thereby recognizing achievement and providing incentive for improvement in the quality of the fairs; and that this act is designed to accomplish this purpose and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

2-36-201. Administration.

The Arkansas Livestock and Poultry Commission shall be empowered and authorized to administer the provisions of this subchapter and adopt such regulations as it may deem necessary.

History. Acts 1973, No. 317, § 1; A.S.A. 1947, § 78-1610.

2-36-202. Premium funds generally.

Premium funds appropriated by the General Assembly for the purpose of assisting in the development of the agricultural, livestock, and related industries of the state shall be disbursed and, thereafter, expended by the county and district livestock show or fair associations in the manner and for the purposes provided in this subchapter.

History. Acts 1973, No. 317, § 1; A.S.A. 1947, § 78-1610.

2-36-203. Premium funds for state fair.

(a) The Arkansas Livestock Show Association shall be entitled to receive the total amount of funds appropriated by the General Assembly for the purpose of paying premiums at the Arkansas State Fair and Livestock Show after qualifying by the filing of an application with the Arkansas Livestock and Poultry Commission and furnishing bond to the State of Arkansas in such form and amount and containing such conditions therein and type of surety thereon as the commission shall by general regulations determine.

(b)(1) Premium funds paid over to the association shall be used only for the purpose of paying awards on approved entry classifications, the exhibitors of which are residents of this state.

(2) The association may pay awards on livestock to nonresident owners in an amount not in excess of ten percent (10%) of any premium

funds received by it from an appropriation for the purpose of paying awards at the Arkansas State Fair and Livestock Show.

History. Acts 1973, No. 317, § 10;
A.S.A. 1947, § 78-1619.

2-36-204. Division of funds among counties and districts.

(a)(1) Each county and district livestock show or fair association qualifying shall be entitled to that part of the total funds appropriated for the purpose that the qualifying grade points earned by that county for the previous year bear to the total grade points of all counties in which all qualifying associations are located.

(2) No county shall receive less than five hundred dollars (\$500).

(b)(1) Counties having more than one (1) city or town in which regular sessions of circuit court are authorized by law and in which livestock shows have been held, if otherwise qualified, may participate in the county premium funds on the same basis as other county shows.

(2) Associations located in two (2) or more adjoining counties may hold a joint show upon approval of their respective associations, in which event, the funds due each association shall be paid to the executive officer of the joint show.

History. Acts 1973, No. 317, § 5; A.S.A.
1947, § 78-1614.

2-36-205. Use of premium funds.

(a)(1) Premium funds paid over by the Arkansas Livestock and Poultry Commission to the respective associations shall be used only for the purpose of paying awards on approved entry classifications, the exhibitors of which are residents of this state.

(2) Exhibitors shall be ineligible to receive such funds from more than one (1) county association during any fiscal year.

(b) Not less than twenty-five percent (25%) of premium funds paid over by the state to the respective associations shall be used for paying premiums to winners of awards in the junior division of 4-H and FFA shows.

History. Acts 1973, No. 317, § 9; A.S.A.
1947, § 78-1618.

2-36-206. Appropriations for construction and operation.

(a)(1)(A) Funds appropriated by the General Assembly to be used for construction of a district livestock show shall be paid over to the executive officers of the respective district livestock show or fair associations.

(B) None of the funds may be used for paying premiums at or for acquiring sites for the district shows.

(2) No state funds may be paid over to any district association unless and until the executive officer shall have furnished bond to the State of Arkansas in such form and amount and containing such conditions and type of surety as the Arkansas Livestock and Poultry Commission shall by general regulation determine.

(b)(1) Funds appropriated by the General Assembly to be used for construction and operation of the Arkansas State Fair and Livestock Show shall be disbursed upon orders of the commission.

(2) The operating revolving fund set aside in a special account to be used for operating expenses in conducting the livestock show shall continue to be set aside for that purpose. All profits from the operation of the show shall be deposited in this account to the extent necessary to maintain the balance at the full amount of the initial deposit.

(3) If in any year the show is operated at a loss, then funds appropriated for this purpose by the General Assembly shall be used to the extent necessary to maintain the balance in the fund account at the full amount of the initial deposit.

(c) The commission shall designate the disbursing officers of all livestock show funds appropriated by the General Assembly.

History. Acts 1949, No. 20, §§ 2, 3;
A.S.A. 1947, §§ 78-1605, 78-1606.

2-36-207. Applications for funds.

(a) Each county and district livestock show or fair association desiring to participate in funds appropriated for a given fiscal year for the purpose of paying premiums on qualified entries as defined in this subchapter shall file an application during the month of June next preceding the fiscal year with the Arkansas Livestock and Poultry Commission.

(b)(1) The application shall include a complete report on the prior year's fair activities with regard to fair dates, exhibitors, classifications, amount of association funds paid as premiums over and above state funds, and any and all other information requested by the commission which it may deem necessary in order to classify and grade the fair.

(2) The application shall be made by the president, secretary, treasurer, or other executive officer of the association on forms to be prescribed and furnished by the commission.

(c) Only those applications received before the close of business on June 30 shall be considered by the commission in making allocation of funds appropriated for that purpose for the following fiscal year.

History. Acts 1973, No. 317, § 3; A.S.A.
1947, § 78-1612.

2-36-208. Bonding of executive officers.

No state funds may be paid over to any county and district livestock show or fair association unless and until the executive officer shall have furnished bond to the State of Arkansas in such form and amount and containing such conditions and type of surety as the Arkansas Livestock and Poultry Commission shall by general regulation determine.

History. Acts 1973, No. 317, § 2; A.S.A. 1947, § 78-1611.

2-36-209. Determination of bond and fund amounts.

(a) Within sixty (60) days after the closing date for the receipt of applications for funds, the Arkansas Livestock and Poultry Commission shall determine the amount of bond which the executive officer shall furnish and the amount of premium funds to which each county and district livestock show or fair association is entitled in accordance with the provisions of this subchapter.

(b) The state warrant issued in favor of each association for the amount found to be due shall be transmitted to the executive officer thereof upon receipt by the commission of a bond executed in conformity with its requirements.

History. Acts 1973, No. 317, § 4; A.S.A. 1947, § 78-1613.

2-36-210. Audits of expenditures.

(a)(1) The executive officer of each county, district, and state livestock show or fair association shall file an itemized listing of all expenditures of state funds with the Arkansas Livestock and Poultry Commission in a format developed by the commission.

(2) Upon request by the commission, the executive officer of each county, district, and state livestock show or fair association shall present to the commission adequate documentation supporting listed expenditures.

(b) The Division of Legislative Audit may audit all expenditures of state funds paid over to the executive officers of the respective county, district, and state livestock show or fair association and file a copy of the report of each audit with the commission.

History. Acts 1973, No. 317, § 11; A.S.A. 1947, § 78-1620; Acts 2001, No. 619, § 1.

2-36-211. Accounting reports by recipients.

(a)(1) Each county and district livestock show or fair association participating in funds appropriated for paying premiums or appropriated for construction purposes at the various county, district, and fair

associations shall annually submit to the Arkansas Livestock and Poultry Commission an itemized listing of all expenditures.

(2) In addition, the association shall file with the commission the original invoices, contracts, and other supporting documents necessary to adequately support the claim for the amount of funds received from the commission for construction programs.

(b)(1) For those expenditures representing premiums and awards payments, the receiving association shall file with the commission a detailed listing of payees, amounts, and classifications of awards and cancelled checks in support thereof.

(2) The documentation of expenditures as set forth in this section shall be maintained by the commission until audited by the Division of Legislative Audit.

(c) The commission shall require that all documentation for the prior year's expenditures by an association be filed in compliance with subsections (a) and (b) of this section prior to the making of any further grants for premiums or construction to these associations.

History. Acts 1975, No. 545, §§ 1, 2;
A.S.A. 1947, §§ 78-1610.1, 78-1610.2.

SUBCHAPTER 3 — COUNTY AND DISTRICT SHOWS OR FAIRS

SECTION.

- 2-36-301. Northwest Arkansas District Fair and Livestock Show.
- 2-36-302. Northeast Arkansas District Fair Advisory Board.
- 2-36-303. Annual joint fair and livestock shows by adjoining counties.
- 2-36-304. Participation by nonresident landowner.

SECTION.

- 2-36-305. District junior livestock shows.
- 2-36-306. North Central Arkansas District Fair and Livestock Show.
- 2-36-307. Arkansas-Oklahoma District Fair.

Effective Dates. Acts 1981, No. 770, § 27: July 1, 1981. Emergency clause provided: "It is hereby found and determined by the Seventy-Third General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this act on July 1, 1981 is essential to the operation of the agency for which the appropriations of this act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this act beyond July 1, 1981 could work irreparable harm upon the proper administration and providing of essential governmental programs. Therefore, an emergency is hereby declared to exist and

this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1981."

Acts 1987, No. 554, § 2: Apr. 2, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present law relating to the Northeast Arkansas District Fair is unduly burdensome and in need of revision; that the revision should go into effect immediately; that unless this emergency clause is adopted this Act will not go into effect until ninety days after extended recess or adjournment of the General Assembly. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preserva-

tion of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 1105, § 31: July 1, 1991. Emergency clause provided: "It is hereby found and determined by the Seventy-Eighth General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1991 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1991 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in

full force and effect from and after July 1, 1991."

Acts 2003, No. 1288, § 33: July 1, 2003. Emergency clause provided: "It is found and determined by the General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 2003 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 2003 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 2003."

2-36-301. Northwest Arkansas District Fair and Livestock Show.

(a) There is established a district livestock show to be known as the "Northwest Arkansas District Fair and Livestock Show" to be located in Boone County, and to be managed by the existing livestock show association which manages and conducts the county livestock show in that county.

(b) Counties composing the Northwest Arkansas District Fair and Livestock Show district shall be Boone County, Newton County, Marion County, Baxter County, Searcy County, and Carroll County.

(c) The Northwest Arkansas District Fair and Livestock Show shall enjoy the same privileges and status as the four (4) previously established district livestock shows in the State of Arkansas.

History. Acts 1961, No. 334, §§ 1-3; 1963, No. 243, § 1; A.S.A. 1947, §§ 78-1607 — 78-1609.

2-36-302. Northeast Arkansas District Fair Advisory Board.

(a)(1) There is created the Northeast Arkansas District Fair Advisory Board to be composed of thirty-one (31) members:

- (A) Five (5) members from Mississippi County;
- (B) Four (4) members from Craighead County;
- (C) Two (2) members from Greene County;
- (D) One (1) member from Clay County;
- (E) Three (3) members from Crittenden County;
- (F) Two (2) members from St. Francis County;

- (G) One (1) member from Cross County;
- (H) Two (2) members from Poinsett County;
- (I) Two (2) members from Jackson County;
- (J) Two (2) members from Independence County;
- (K) One (1) member from Lawrence County;
- (L) One (1) member from Randolph County;
- (M) One (1) member from Lee County;
- (N) One (1) member from Woodruff County; and
- (O) Three (3) members from White County.

(2)(A) The county fair board of each county shall select the person from that county to be a member of the Northeast Arkansas District Fair Advisory Board.

(B) If any county does not have a county fair board, the county judge of that county shall appoint that county's representative to the board.

(3) Members of the board shall serve four-year terms, and any vacancies arising in the board membership shall be filled in the same manner as were the original appointments.

(b)(1) In all matters, the fair shall be subject to the rules and regulations of the Arkansas Livestock and Poultry Commission and otherwise conducted in the same manner as other district fairs.

(2)(A) The location of the Northeast Arkansas District Fair shall be determined by the Northeast Arkansas District Fair Advisory Board under the provisions of this section.

(B)(i) Determination of the location and the date of the fair shall be by a vote of at least two-thirds ($\frac{2}{3}$) of a quorum of the board.

(ii) A quorum shall be sixteen (16) members.

(c) The board shall annually select a chair from among its membership.

(d) After each federal decennial census, the membership on the board shall be reapportioned among the counties listed in subsection (a) of this section in such manner as to reflect the proportionate population of each county relating to the district as a whole.

History. Acts 1983, No. 746, §§ 1, 2; A.S.A. 1947, §§ 78-1625, 78-1626; Acts 1987, No. 554, § 1; 1999, No. 99, § 1.

A.C.R.C. Notes. Subdivision (b)(1) originally began "The Northeast Arkansas

District Fair shall be held in Jonesboro, Arkansas, through calendar year 1992."

Subdivision (b)(2) originally began "For calendar year 1993 and thereafter."

2-36-303. Annual joint fair and livestock shows by adjoining counties.

(a)(1) Any two (2) or more adjoining counties in the state are authorized to enter into an agreement for and to conduct an annual joint fair and livestock show.

(2)(A) The agreement for a joint fair and livestock show shall be executed in writing by the county fair and livestock show association board of each of the participating counties.

(B) The agreement shall designate the location at which the annual joint fair and livestock show is to be conducted and shall contain such other provisions regarding the joint fair and livestock show as the boards of the respective participating county fair and livestock show associations shall deem necessary or appropriate to assure the proper and efficient conduct of the joint fair and livestock show.

(b)(1) When any two (2) or more adjoining county fair or livestock show associations conduct a joint fair and livestock show as authorized in this section, funds appropriated by the state for county livestock show construction shall be allocated and paid by the disbursing officer of the Arkansas Livestock and Poultry Commission to the executive officer of each participating county association the same as if each county were conducting a separate fair and livestock show.

(2) Construction funds received by each executive officer shall be transmitted to the appropriate official of the joint fair and livestock show to be used exclusively for construction of facilities for conducting the joint fair and livestock show.

(c)(1)(A) Each joint fair and livestock show conducted pursuant to the provisions of this section shall be graded and awarded qualifying grade points the same as if it were a single county show for the purposes of the allocation of state funds appropriated for premiums for county livestock shows.

(B) The amount of such funds allocated and distributed to any such joint fair and livestock show by the disbursing officer of the commission shall be based upon the qualifying grade points earned by the joint show.

(2)(A) In addition to the premium funds so allocated to the joint show on the basis of qualifying grade points, each participating county other than the county in which the joint show is located shall be eligible to receive from state funds appropriated for county livestock show premiums the amount of five hundred dollars (\$500), which shall be paid annually by the disbursing officer of the commission to the executive officer of each participating county fair association the same as if each county were conducting a separate fair and livestock show.

(B) Premium funds received by each executive officer shall be transmitted to the appropriate official of the joint fair and livestock show to be used exclusively for premiums at the joint fair and livestock show.

History. Acts 1983, No. 172, §§ 1-3;
A.S.A. 1947, §§ 78-1622 — 78-1624.

2-36-304. Participation by nonresident landowner.

In the event any individual owns land in two (2) adjacent counties and the county in which he or she resides does not conduct a county livestock show, the individual shall be deemed to be eligible to partici-

pate in the county livestock show conducted in the county in which he or she owns land but does not reside.

History. Acts 1981, No. 770, § 19; nonresident livestock auctioneer, § 17-17-A.S.A. 1947, § 78-1621.

Cross References. Bond required for

2-36-305. District junior livestock shows.

(a) A junior livestock show is authorized for each of the six (6) livestock show districts of the state.

(b) Any organization desiring to establish a district junior livestock show shall make application and submit proposed organizational and operational plans for the district junior livestock show to the Arkansas Livestock and Poultry Commission.

(c) The commission may approve only one (1) district junior livestock show in each of the six (6) livestock show districts.

(d) Funds appropriated to the commission for district junior livestock shows shall be distributed equally to all district junior livestock shows.

History. Acts 1991, No. 1105, § 18; Acts 1989 (1st Ex. Sess.), No. 192, § 20. A similar provision which was also codified as § 2-36-305, and was previously superseded, was derived from Acts 1987, No. 1055, § 4.

A.C.R.C. Notes. Former § 2-36-305, concerning district junior livestock shows, is deemed to be superseded by this section. The former section was derived from

2-36-306. North Central Arkansas District Fair and Livestock Show.

(a) There is established a district livestock show to be known as the "North Central Arkansas District Fair and Livestock Show" and to be located in Izard County.

(b) Counties composing the North Central Arkansas District Fair and Livestock Show district shall be Cleburne County, Fulton County, Izard County, Sharp County, Stone County, and Van Buren County.

(c) The North Central Arkansas District Fair and Livestock Show shall enjoy the same privileges and status as previously established district livestock shows in the State of Arkansas.

(d)(1) There is created the North Central Arkansas District Fair Board, to be composed of twelve (12) members. Two (2) members shall be selected from each county. One (1) member in each county shall be selected by the livestock show association in the county, and one (1) shall be selected by the Arkansas Farm Bureau Federation.

(2) The members of the board shall serve four-year terms. Any vacancies arising in the board membership shall be filled in the same manner as were the original appointments. The terms of the initial members of the board shall be determined by lot so that the terms of three (3) members expire each year.

History. Acts 1997, No. 881, § 1; 1999, No. 99, § 2; 2001, No. 358, § 1.

2-36-307. Arkansas-Oklahoma District Fair.

(a) There is established a district livestock show to be known as the "Arkansas-Oklahoma District Fair" and to be located in Fort Smith, Sebastian County, Arkansas at Kay Rodgers Park.

(b) The Arkansas-Oklahoma District Fair district shall be composed of:

(1) The Arkansas counties of Benton, Conway, Crawford, Franklin, Johnson, Logan, Perry, Polk, Pope, Scott, Sebastian, Washington, and Yell; and

(2) In Oklahoma:

(A) The counties of Adair, Cherokee, Haskell, Latimer, LeFlore, and Sequoyah that shall have exhibits counted for premium points but shall not receive Arkansas state funds; and

(B) The counties of Delaware, McCurtain, McIntosh, Muskogee, Pittsburg, and Wagoner that shall not be counted for premium points or receive Arkansas state funds.

(c)(1) The fair shall commence each year no later than the third Friday following Labor Day.

(2) However, the fair may not commence earlier than the third Friday following Labor Day unless all Arkansas county fairs in the district have been completed before the proposed earlier date.

(d) The fair shall enjoy the same privileges as previously established district fairs and livestock shows in the State of Arkansas.

(e)(1) There is created the Arkansas-Oklahoma District Fair Board to produce and administer the fair.

(2) The board shall be composed of:

(A) The District Fair Committee appointed by the Arkansas-Oklahoma Regional Education and Promotion Association, Inc.; and

(B) At the option of each county fair among the Arkansas fairs in the district, one (1) member from each fair appointed by the respective fairs.

(3) The board shall operate at the discretion of the members.

History. Acts 2003, No. 685, § 1.

CHAPTER 37

ARKANSAS FEED LAW OF 1997

SECTION.

2-37-101. Title.

2-37-102. Enforcing agency.

2-37-103. Definitions of words and terms.

2-37-104. Registration and licensing.

2-37-105. Labeling.

2-37-106. Misbranding.

2-37-107. Adulteration.

SECTION.

2-37-108. Prohibited acts.

2-37-109. Inspection fees and reports.

2-37-110. Regulations.

2-37-111. Inspection, sampling, and analysis.

2-37-112. Detained commercial feeds.

2-37-113. Penalties.

SECTION.

2-37-114. Cooperation with other entities.

A.C.R.C. Notes. As enacted by Acts 1997, No. 726, this chapter principally follows the Uniform Feed Act.

Publisher's Notes. Former Chapter 37, concerning commercial feedstuffs, was repealed by Acts 1997, No. 726, § 18. The chapter was derived from the following sources:

2-37-101. Acts 1951, No. 108, § 2; A.S.A. 1947, § 78-702.

2-37-102. Acts 1969, No. 49, §§ 1, 2; A.S.A. 1947, §§ 78-719, 78-720.

2-37-103. Acts 1951, No. 108, §§ 12, 13; A.S.A. 1947, §§ 78-714, 78-715.

2-37-104. Acts 1951, No. 108, § 14; A.S.A. 1947, § 78-716.

2-37-105. Acts 1951, No. 108, §§ 10, 11; A.S.A. 1947, §§ 78-711, 78-712.

2-37-106. Acts 1951, No. 108, § 1; 1953, No. 66, § 1; A.S.A. 1947, § 78-701.

2-37-107. Acts 1967, No. 439, § 1; A.S.A. 1947, § 78-718.

2-37-108. Acts 1951, No. 108, §§ 3, 4; A.S.A. 1947, §§ 78-703, 78-704.

2-37-109. Acts 1951, No. 108, § 9; A.S.A. 1947, § 78-710.

2-37-110. Acts 1951, No. 108, § 15; A.S.A. 1947, § 78-717.

2-37-111. Acts 1951, No. 108, § 5; A.S.A. 1947, § 78-705.

2-37-112. Acts 1951, No. 108, § 7; A.S.A. 1947, § 78-707.

2-37-113. Acts 1951, No. 108, § 8; A.S.A. 1947, § 78-709.

2-37-114. Acts 1951, No. 108, § 6; 1979, No. 120, § 1; 1983, No. 238, § 1; A.S.A. 1947, § 78-706; Acts 1993, No. 783, §§ 5, 6.

RESEARCH REFERENCES

A.L.R. Products liability for animal feed or medicines. 29 A.L.R.4th 1045.

2-37-101. Title.

This chapter shall be known as the "Arkansas Feed Law of 1997".

History. Acts 1997, No. 726, § 1.

2-37-102. Enforcing agency.

This chapter shall be administered by the State Plant Board.

History. Acts 1997, No. 726, § 2.

2-37-103. Definitions of words and terms.

When used in this chapter:

(a) "Board" means the State Plant Board.

(b) "Brand name" means any word, name, symbol, device, or any combination thereof, identifying the commercial feed of a distributor or registrant and distinguishing it from that of others.

(c) "Commercial feed" means all materials or combination of materials which are distributed for use as feed or for mixing in feed, unless

such materials are specifically exempted. Unmixed whole seeds, when such whole seeds are not adulterated, are exempt. The board by rule may exempt from this definition, or from specific provisions of this chapter, commodities such as hay, straw, stover, silage, cobs, husks, hulls, and individual chemical compounds or substances when such commodities, compounds or substances are not intermixed with other materials, and are not adulterated. Feed supplied to contract feeders and feed ingredients supplied to integrated operators are not commercial feed and are therefore exempt if granted an exemption license in accordance with § 2-37-104. Furthermore, exchanges of feed or feed ingredients between or among integrated operators, who have been granted an exemption license as provided in § 2-37-104, are not commercial feed and are therefore not subject to the provisions of this chapter. The board by rule may exempt from this definition, or from certain provisions of this chapter certain pet food or specialty pet food.

(d) "Contract feeder" means a person, who as an independent contractor, feeds animals pursuant to a contract whereby such feed is supplied, furnished, or otherwise provided such person and whereby such person's remuneration is determined all or in part by feed consumption, mortality, profits, or amount or quality of product.

(e) "Customer-formula feed" means commercial feed which consists of a mixture of commercial feeds and/or feed ingredients each batch of which is manufactured according to the specific instructions of the final purchaser.

(f) "Distribute" means to offer for sale, sell, exchange, or barter, commercial feed.

(g) "Distributor" means any person who distributes.

(h) "Drug" means any article intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in animals other than man and articles other than feed intended to affect the structure of any function of the animal body.

(i) "Feed ingredient" means each of the constituent materials making up a commercial feed.

(j) "Integrated operator" means a person who contracts with a contract feeder to supply feed and pays that person based on all or in part by feed consumption, mortality, profits, or amount or quality of product produced.

(k) "Label" means a display of written, printed, or graphic matter upon or affixed to the container in which a commercial feed is distributed, or on the invoice or delivery slip with which a commercial feed is distributed.

(l) "Labeling" means all labels and other written, printed, or graphic matter (1) upon a commercial feed or any of its containers or wrapper or (2) accompanying such commercial feed.

(m) "Manufacture" means to grind, mix or blend, or further process a commercial feed for distribution.

(n) "Mineral feed" means a commercial feed intended to supply primarily mineral elements or inorganic nutrients.

(o) "Official sample" means a sample of feed taken by the board or its agent in accordance with the provisions of § 2-37-111(c), (e), or (f).

(p) "Percent" or "percentages" means percentages by weights.

(q) "Person" includes individual, partnership, corporation, and association.

(r) "Pet" means any domesticated animal normally maintained in or near the households of the owners thereof.

(s) "Pet food" means any commercial feed prepared and distributed for consumption by pets.

(t) "Product name" means the name of the commercial feed which identifies it as to kind, class, or specific use.

(u) "Quantity statement" means the net weight (mass), net volume (liquid or dry) or count.

(v) "Specialty pet" means any domesticated animal pet normally maintained in a cage or tank, such as, but not limited to, gerbils, hamsters, canaries, psittacines, birds, mynahs, finches, tropical fish, goldfish, snakes and turtles.

(w) "Specialty pet food" means any commercial feed prepared and distributed for consumption by specialty pets.

(x) "Ton" means a net weight of two thousand pounds (2,000#) avoirdupois.

History. Acts 1997, No. 726, § 3.

2-37-104. Registration and licensing.

(a)(1) Any person:

(A) Who manufactures a commercial feed within this state;

(B) Who distributes a commercial feed in or into the state; or

(C) Whose name appears on the label of a commercial feed as guarantor,

shall obtain a license for each facility which distributes in or into the state authorizing him or her to manufacture or distribute commercial feed before he or she engages in such activity.

(2) Any person who makes only retail sales of commercial feed which bears labeling or other approved indication that the commercial feed is from a licensed manufacturer, guarantor, or distributor who has assumed full responsibility for the tonnage inspection fee due under this chapter is not required to obtain a license.

(b)(1) Any person who is required to obtain a license shall submit an application on a form provided or approved by the State Plant Board accompanied by a license fee of ten dollars (\$10.00) paid to the board for each facility. The board shall remit such license fees to the Treasurer of State for deposit into the State Treasury to the credit of the Plant Board Fund for the sole use of the board.

(2) Each license shall expire on the last day of December of the year for which it is issued; provided that any license shall be valid through ninety (90) days of the next ensuing year or until the issuance of the renewal license, whichever event first occurs, if the holder thereof has

filed a renewal application with the board on or before December 31st of the year for which the current license was issued.

(3) Any new applicant who fails to obtain a license within fifteen (15) working days after notification of the requirement to obtain a license, or any licensee who fails to comply with license renewal requirements, shall pay a thirty-dollars late fee in addition to the license fee.

(c) The form and content of the commercial feed license application shall be established by rules adopted by the board.

(d) The board may, at any time, request from a license applicant or licensee copies of labels and labeling in order to determine compliance with the provisions of this chapter.

(e)(1) The board is empowered to refuse to issue a license to any person not in compliance with the provisions of this chapter.

(2) The board may suspend or revoke any license issued to any person found not in compliance with any provision of this chapter.

(3) The board may place conditions that limit production or distribution of a particular commercial feed on the license of any person found not to be in compliance with this chapter.

(4) No license shall be conditioned, suspended, refused or revoked unless the applicant or licensee shall first be given an opportunity to be heard before the board in order to comply with the requirements of this chapter.

(f) In order to be exempt from the provisions of this chapter, integrated operators, as defined in § 2-37-102, shall submit an application for exemption on a form provided or approved by the board accompanied by an application fee of ten dollars (\$10.00) for each facility. The board shall remit such application fees to the Treasurer of State for deposit into the State Treasury to the credit of the Plant Board Fund to be used solely by the board.

(g) A grower's production of unmanipulated poultry litter is exempt from the provisions of this chapter.

History. Acts 1997, No. 726, § 4.

2-37-105. Labeling.

A commercial feed shall be labeled as follows:

(a) In the case of a commercial feed, except a customer-formula feed, it shall be accompanied by a label bearing the following information:

(1) The quantity statement (may be stated in metric units in addition to the required avoirdupois).

(2) The product name and brand name, if any, under which the commercial feed is distributed.

(3) The guaranteed analysis stated in such terms as the State Plant Board by regulation determines is required to advise the user of the composition of the feed or to support claims made in the labeling. In all cases the substances or elements must be determinable by laboratory methods such as the methods published by the Association of Analytical Chemists International.

(4) The common or usual name of each ingredient used in the manufacture of the commercial feed, provided that the board by regulation may permit the use of a collective term for a group of ingredients which perform a similar function, or the board may exempt such commercial feeds, or any group thereof, from this requirement of an ingredient statement if the board finds that such statement is not required in the interest of consumers.

(5) The name and principal mailing address of the manufacturer or the person responsible for distributing the commercial feed.

(6) Adequate directions for use for all commercial feeds containing drugs and for such other feeds as the board may require by regulation as necessary for their safe and effective use.

(7) Such precautionary statements as the board by regulation determines are necessary for the safe and effective use of the commercial feed.

(8) If a drug containing product is used:

(A) The purpose of the medication (claim statement), and

(B) The established name of each active drug ingredient and the level of each drug used in the final mixture expressed as defined by rule.

(b) In the case of a customer-formula feed, it shall be accompanied by a label, invoice, delivery slip or other shipping document, bearing the following information:

(1) Name and address of the manufacturer;

(2) Name and address of the purchaser;

(3) Date of delivery;

(4) The product name and net weight (may be stated in metric units in addition to the required avoirdupois) of each commercial feed and each other ingredient used in the mixture;

(5) Adequate directions for use and precautionary statements for all customer-formula feeds containing drugs and for such other feeds as the board may require by regulation as necessary for their safe and effective use.

(6) If a drug containing product is used:

(A) The purpose of the medication (claim statement); and

(B) The established name of each active drug ingredient and the level of each drug used in the final mixture expressed as defined by rule.

History. Acts 1997, No. 726, § 5.

2-37-106. Misbranding.

A commercial feed shall be deemed to be misbranded if:

(a) Its labeling is false or misleading in any particular;

(b) It is distributed under the name of another commercial feed;

(c) It is not labeled as required in § 2-37-105;

(d) It purports to be or is represented as a commercial feed, or if it purports to contain or is represented as containing a commercial feed

ingredient, unless such commercial feed or feed ingredient conforms to the definition, if any, prescribed by regulation by the State Plant Board;

(e) Any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

History. Acts 1997, No. 726, § 6.

2-37-107. Adulteration.

A commercial feed shall be deemed to be adulterated:

(1) If it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance, such commercial feed shall not be considered adulterated under this section if the quantity of such substance in such commercial feed does not ordinarily render it injurious to health; or

(2) If it bears or contains any added poisonous, added deleterious, or added non-nutritive substance which is unsafe within the meaning of Section 406 of the Federal Food, Drug, and Cosmetic Act (other than one which is (i) a pesticide chemical in or on a raw agricultural commodity; or (ii) a food additive); or

(3) If it is, or it bears or contains any food additive which is unsafe within the meaning of Section 409 of the Federal Food, Drug, and Cosmetic Act; or additive which is unsafe within the meaning of Section 409 of the Federal Food, Drug, and Cosmetic Act; or

(4) If it is a raw agricultural commodity and it bears or contains a pesticide chemical which is unsafe within the meaning of Section 408(a) of the Federal Food, Drug, and Cosmetic Act; provided, that where a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or a tolerance prescribed under Section 408 of the Federal Food, Drug, and Cosmetic Act and such raw agricultural commodity has been subjected to processing such as canning, cooking, freezing, dehydrating, or milling, the residue of such pesticide chemical remaining in or on such processed feed shall not be deemed unsafe if such residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice and the concentration of such residue in the processed feed is not greater than the tolerance prescribed for the raw agricultural commodity unless the feeding of such processed feed will result or is likely to result in a pesticide residue in the edible product of the animal, which is unsafe within the meaning of Section 408(a) of the Federal Food, Drug, and Cosmetic Act; or

(5) If it is, or it bears or contains any color additive which is unsafe within the meaning of Section 706 of the Federal Food, Drug and Cosmetic Act; or

(6) If it is, or it bears or contains any new animal drug which is unsafe within the meaning of Section 512 of the Federal Food, Drug, and Cosmetic Act; or

(7) If it consists in whole or in part of any filthy, putrid, or decomposed substance, or if it is otherwise unfit for feed; or

(8) If it has been prepared, packed, or held under unsanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health; or

(9) It is, in whole or in part, the product of a diseased animal or of an animal which has died otherwise than by slaughter which is unsafe within the meaning of Section 402(a)(1) or (2) of the Federal Food, Drug, and Cosmetic Act; or

(10) If its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health; or

(11) If it has been intentionally subjected to radiation, unless the use of the radiation was in conformity with the regulation or exemption in effect pursuant to Section 409 of the Federal Food, Drug, and Cosmetic Act; or

(12) If any valuable constituent has been in whole or in part omitted or abstracted therefrom or any less valuable substance substituted therefor; or

(13) If its composition or quality falls below or differs from that which it is purported or is represented to possess by its labeling; or

(14) If it contains viable weed seeds in amounts exceeding the limits which the State Plant Board shall establish by rule; or

(15) If it contains a drug and the methods used in or the facilities or controls used for its manufacture, processing, or packaging do not conform to current good manufacturing practice regulations promulgated by the board to assure that the drug meets the requirement of this chapter as to safety and has the identity and strength and meets the quality and purity characteristics which it purports or is represented to possess. In promulgating such regulations, the board shall adopt the current good manufacturing practice (CGMP) regulations for Type A medicated articles and Type B and Type C medicated feeds established under authority of the Federal Food, Drug, and Cosmetic Act, unless the board determines the current good manufacturing regulations are not appropriate to the conditions which exist in this state.

History. Acts 1997, No. 726, § 7.

U.S. Code. The Federal Food, Drug, and Cosmetic Act, referred to in this section, is codified as 21 U.S.C. § 301 et seq.

Sections 402, 406, 408, 409, 512, and 706 of the act are codified as 21 U.S.C. §§ 342, 346, 346a, 348, 360b, and 379e, respectively.

2-37-108. Prohibited acts.

The following acts and the causing thereof within the state are hereby prohibited:

- (a) The manufacture or distribution of any commercial feed that is adulterated or misbranded.
- (b) The adulteration or misbranding of any commercial feed.
- (c) The distribution of agricultural commodities such as whole seed, hay, straw, stover, silage, cobs, husks, and hulls, which are adulterated within the meaning of § 2-37-107.
- (d) The removal or disposal of a commercial feed in violation of any order under § 2-37-112.
- (e) The failure or refusal to register in accordance with § 2-37-104.
- (f) The violation of § 2-37-113(f).
- (g) Failure to pay inspection fees and file reports as required by § 2-37-109.

History. Acts 1997, No. 726, § 8.

2-37-109. Inspection fees and reports.

(a) An inspection fee at the rate of thirty cents (\$.30) per ton shall be paid on commercial feeds distributed in this state by the person whose name appears on the label as the manufacturer, guarantor or distributor, except that a person other than the manufacturer, guarantor or distributor may assume liability for the inspection fee, subject to the following:

(1) No fee shall be paid on a commercial feed if the payment has been made by a previous distributor.

(2) No fee shall be paid on customer-formula feeds if the inspection fee is paid on the commercial feeds which are used as ingredients therein.

(3) No fee shall be paid on commercial feeds which are used as ingredients for the manufacture of commercial feeds. If the fee has already been paid, credit shall be given for such payment.

(4) On commercial feed distributed in quantities of twenty-five (25) tons or less, a minimum fee of ten dollars (\$10.00) per quarterly report shall be paid. A tonnage report and minimum fee is due for each reporting period, even though no distribution of commercial feeds occurred in the state during that period.

(b) Each person who is liable for the payment of such fee shall:

(1) File, not later than the last day in January, April, July, and October of each year, quarterly statement, setting forth the number of net tons of commercial feeds distributed in this state during the preceding three (3) months; and upon filing such statement shall pay the inspection fee at the rate stated in subsection (a) of this section. Inspection fees which are due and owing and have not been remitted to the State Plant Board within fifteen (15) days following the date due shall have a penalty fee of fifteen percent (15%) or twenty-five dollars (\$25.00), whichever is the higher, added to the amount due when

payment is finally made. The assessment of this penalty fee shall not prevent the board from taking other actions as provided in this chapter.

(2) Keep such records as may be necessary or required by the board to indicate accurately the tonnage of commercial feed distributed in this state, and the board shall have the right to examine such records to verify statements of tonnage. Failure to make an accurate statement of tonnage or to pay the inspection fee or comply as provided herein shall constitute sufficient cause for the cancellation of the license of a distributor. However, no license shall be canceled or revoked before the distributor has been given an opportunity to be heard before the board and to pay the fees owed under this section.

(c) Fees collected shall constitute a fund for the payment of the costs of inspection, sampling, and analysis, and other expenses necessary for administration of this chapter and shall be deposited into the State Treasury to the credit of the Plant Board Fund.

History. Acts 1997, No. 726, § 9.

2-37-110. Regulations.

(a) The State Plant Board is authorized to promulgate such reasonable regulations as may be necessary for the efficient enforcement of this chapter. In the interest of uniformity the board shall by regulation adopt, unless the board determines that they are inconsistent with the provisions of this chapter or are not appropriate to conditions which exist in this state, the following:

(1) The Official Definitions of Feed Ingredients and Official Feed Terms adopted by the Association of American Feed Control Officials and published in the Official Publication Association of American Feed Control Officials; and

(2) Any regulation promulgated pursuant to the authority of the Federal Food, Drug, and Cosmetic Act, provided, that the board would have the authority under this chapter to promulgate such regulations.

(b) Before the issuance, amendment, or repeal of any regulation authorized by this chapter, the board shall publish the proposed regulation, amendment, or notice to repeal an existing regulation in a manner reasonably calculated to give interested parties, including all current registrants, adequate notice and shall afford all interested persons an opportunity to present their views thereon, orally or in writing, within a reasonable period of time. After consideration of all views presented by interested persons, the board shall take appropriate action to issue the proposed regulation or to amend or repeal an existing regulation. The provisions of this subsection notwithstanding, if the board, pursuant to the authority of this subsection, adopts the Official Definitions of Feed Ingredients or Official Feed Terms as adopted by the Association of American Feed Control Officials, or regulations promulgated pursuant to the authority of the Federal Food, Drug, and Cosmetic Act, any amendment or modification adopted by said Association or by the United States Secretary of Health and Human Services in

the case of regulations promulgated pursuant to the Federal Food, Drug and Cosmetic Act, shall be adopted automatically under this chapter without regard to the publication of the notice required by this subsection (b), unless the board by order specifically determines that said amendment of modification shall not be adopted.

History. Acts 1997, No. 726, § 10.

U.S. Code. The Federal Food, Drug,

and Cosmetic Act, referred to in this section, is codified as 21 U.S.C. § 301 et seq.

2-37-111. Inspection, sampling, and analysis.

(a) For the purpose of enforcement of this chapter, and in order to determine whether its provisions have been complied with, including whether or not any operations may be subject to such provisions, officers or employees designated by the State Plant Board, upon presenting appropriate credentials, and notice to the owner, operator, or agent in charge, are authorized:

(1) To enter, during normal business hours, any factory, warehouse, or establishment within the state in which commercial feeds are manufactured, processed, packed, or held for distribution, or to enter any vehicle being used to transport or hold such feeds; and

(2) To inspect at reasonable times and within reasonable limits and in a reasonable manner, such factory, warehouse, establishment or vehicle and all pertinent equipment, finished and unfinished materials, containers, and labeling herein. The inspection may include the verification of only such records, and production and control procedures as may be necessary to determine compliance with the good manufacturing practice regulations established under § 2-37-107(15).

(b) Notice shall be given for each such inspection, but a notice shall not be required for each entry made during the period covered by the inspection. Each such inspection shall be commenced and completed with reasonable promptness. Upon completion of the inspection the person in charge of the facility or vehicle shall be so notified.

(c) If the owner of any factory, warehouse, or establishment described in subsection (a), or his or her agent refuses to admit the board or its agent to inspect in accordance with subsections (a) and (b), the board is authorized to obtain from any state court a warrant directing such owner or his or her agent to submit premises described in such warrant to inspection.

(d) For the enforcement of this chapter, the board or its designated agent is authorized to enter upon any public or private premises including any vehicle of transport during regular business hours to have access to, and to obtain samples, and to examine records relating to distribution of commercial feeds.

(e) Sampling and analysis shall be conducted in accordance with methods published by the Association of Analytical Chemists International, or in accordance with other generally recognized methods.

(f) The results of all analyses of official samples shall be forwarded by the board to the person named on the label and to the purchaser. When

the inspection and analysis of an official sample indicates a commercial feed has been adulterated or misbranded and upon request within thirty (30) days following the receipt of the analysis the board shall furnish to the registrant or licensee a portion of the sample concerned.

(g) The board, in determining for administrative purposes whether a commercial feed is deficient in any component, shall be guided by the official sample as defined in § 2-37-103(o) and obtained and analyzed as provided for in subsections (d) and (e) of this section.

History. Acts 1997, No. 726, § 11.

2-37-112. Detained commercial feeds.

(a) WITHDRAWAL FROM DISTRIBUTION ORDERS.

(1)(A) When the State Plant Board or its authorized agent has reasonable cause to believe any lot of commercial feed is being distributed in violation of any of the provisions of this chapter or any of the prescribed regulations under this chapter, the board may issue and enforce a written or printed "withdrawal from distribution" order, warning the distributor not to dispose of the lot of commercial feed in any manner until written permission is given by the board or the court.

(B) The board shall release the lot of commercial feed so withdrawn when the provisions and regulations have been complied with.

(C) If compliance is not obtained the board may begin, or upon request of the distributor or registrant, shall begin proceedings for condemnation.

(2) A withdrawal from distribution order issued under this section expires thirty (30) days after the day it was first issued unless condemnation proceedings have begun in a court of competent jurisdiction.

(b) CONDEMNATION AND CONFISCATION.

(1) Any lot of commercial feed not in compliance with the provisions and regulations shall be subject to seizure on complaint of the board to a court of competent jurisdiction in the area in which the commercial feed is located.

(2)(A) In the event the court finds the commercial feed to be in violation of this chapter and orders the condemnation of the commercial feed, it shall be disposed of in any manner consistent with the quality of the commercial feed and the laws of the state.

(B) However, in no instance shall the disposition of the commercial feed be ordered by the court without first giving the claimant an opportunity to apply to the court for release of the commercial feed or for permission to process or re-label the commercial feed to bring it into compliance with this chapter.

(3) If the court orders the sale of the feed, the proceeds from the sale shall be remitted to the Treasurer of State to be credited to the General Revenue Fund Account of the State Apportionment Fund.

History. Acts 1997, No. 726, § 12.

2-37-113. Penalties.

(a) Any person convicted of violating any of the provisions of this chapter or who shall impede, hinder, or otherwise prevent, or attempt to prevent, the State Plant Board or its authorized agent in performance of his or her duty in connection with the provisions of this chapter, shall be adjudged guilty of a violation punishable by a fine of not more than fifty dollars (\$50.00) for the first violation, and not more than two hundred dollars (\$200) for each subsequent violation, and the proceeds from such fines shall be remitted into the State Treasury to the credit of the General Revenue Fund Account of the State Apportionment Fund.

(b) Nothing in this chapter shall be construed as requiring the board or its representative to:

- (1) Report for prosecution;
- (2) Institute seizure proceedings; or
- (3) Issue a withdrawal from distribution order, as a result of minor violations of the chapter, or when the board believes the public interest will best be served by suitable notice of warning in writing.

(c) In all prosecutions for violations of this chapter, the certificate of the analyst, or other officer making the analysis or examination, when sworn to or subscribed by the analyst or officer, shall be prima facie evidence of the facts therein certified.

(d) The board is authorized to apply for and the court to grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this chapter or any regulation promulgated under the chapter notwithstanding the existence of other remedies at law.

The injunction shall be issued without bond.

(e) Any person adversely affected by an act, order, or ruling of the board made pursuant to the provisions of this chapter may within forty-five (45) days thereafter bring action in the Pulaski County Circuit Court for judicial review of the actions.

The form of the proceeding may be any which may be provided by statutes of this state to review decisions of administrative agencies, or in the absence or inadequacy thereof, any applicable form of legal action, including actions for declaratory judgments or writs of prohibitory or mandatory injunctions.

(f) Any person who uses to his or her own advantage, or reveals to other than the board or officers of the board or other officers of state agencies, or to the courts when relevant in any judicial proceeding, any information acquired under the authority of this chapter, concerning any method, records, formulations, or processes which as a trade secret is entitled to protection, is guilty of a Class C misdemeanor; provided, that this prohibition shall not be deemed as prohibiting the board or its authorized agent, from exchanging information of a regulatory nature with authorized officials of the United States Government, or of other

states, who are similarly prohibited by law from revealing this information.

History. Acts 1997, No. 726, § 13; substituted “violation” for “misdemeanor” 2005, No. 1994, § 20.
Amendments. The 2005 amendment substituted “violation” for “misdemeanor” in (a); and substituted “Circuit” for “Chancery” in (e).

2-37-114. Cooperation with other entities.

The State Plant Board may cooperate with and enter into agreements with governmental agencies of this state, other states, agencies of the United States Government, and private associations in order to carry out the purpose and provisions of this chapter.

History. Acts 1997, No. 726, § 14.

CHAPTER 38

LIVESTOCK RUNNING AT LARGE OR STRAYING

SUBCHAPTER.

- 1. GENERAL PROVISIONS.
- 2. STALLIONS, MULES, AND JACKS.
- 3. ANIMALS COVERED BY INITIATED ACTS.
- 4. ANIMALS ON PUBLIC HIGHWAYS.
- 5. FERAL HOGS.

RESEARCH REFERENCES

A.L.R. Liability for damage to motor vehicle or injury to person riding therein resulting from collision with domestic animal at large in street or highway. 21 A.L.R.4th 159.
Liability for damage to motor vehicle or injury to person riding therein resulting from collision with domestic animal at large in street or highway. 29 A.L.R.4th 431.
Liability for damage to motor vehicle or

injury to person riding therein from collision with runaway horse, or horse left unattended or untied in street. 49 A.L.R.4th 653.
Liability for personal injury or death caused by trespassing or intruding livestock. 49 A.L.R.4th 710.
Am. Jur. 3 Am. Jur. 2d, Animals, § 40 et seq.
C.J.S. 3A C.J.S., Animals, § 123 et seq.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 2-38-101. Taking up animals.
- 2-38-102. Range animals.
- 2-38-103. Place of taking.
- 2-38-104. Duty and rights of taker-up or impounder.
- 2-38-105. Certificate of examination.
- 2-38-106. Posting description of animal.

SECTION.

- 2-38-107. Oath of taker-up.
- 2-38-108. Certificate of appraisement.
- 2-38-109. Bond of taker-up.
- 2-38-110. Records.
- 2-38-111. Advertisements to be posted.
- 2-38-112. Publication in addition to posting.

SECTION.

- 2-38-113. Payment of expenses.
2-38-114. Stray pen — Exhibition.
2-38-115. Reclamation by owner.
2-38-116. Refusal to deliver.
2-38-117. Compensation for keeping strays.
2-38-118. No premature disposition of strays.

SECTION.

- 2-38-119. Liability for death or escape of animals.
2-38-120. Forfeiture of right to animal.
2-38-121. Payment and filing required for unclaimed strays.
2-38-122. Judgment for costs.

Cross References. Animals prohibited from running at large in cities or towns, impounding, § 14-54-1101.

Method of publication of advertisements, § 16-3-101.

Records of strays to be kept at each county site in counties having two political districts, § 14-15-901.

Effective Dates. Acts 1840, p. 94, § 4: effective on passage.

Acts 1845, p. 100, § 2: effective on passage.

Acts 1846, p. 28, § 9: effective on passage.

Acts 1875, No. 50, § 2: effective on passage.

Acts 1883, No. 121, § 4: effective on passage.

Acts 1893, No. 12, § 2: effective on passage.

Acts 1897, No. 40, § 2: effective on passage.

Acts 1901, No. 204, § 2: effective on passage.

2-38-101. Taking up animals.

Every citizen, a resident householder in any county in this state, on finding any horse, mare, mule, jack, or jenny or any domesticated cattle, hogs, or sheep, of any age running at large, the owner of which is not known, may take the animal into his or her custody.

History. Rev. Stat., ch. 58, § 1; C. & M. Dig., § 268; Pope's Dig., § 282; A.S.A. 1947, § 78-1101.

2-38-102. Range animals.

No person shall take up any domesticated cattle, hogs, or sheep running in the range, unless they shall be found within his or her enclosure, from April 1 until November 1.

History. Rev. Stat., ch. 58, § 19; C. & M. Dig., § 269; Pope's Dig., § 283; A.S.A. 1947, § 78-1102.

2-38-103. Place of taking.

No person shall take up any stray animal, except on his or her own farm or in his or her immediate vicinity.

History. Rev. Stat., ch. 58, § 23; C. & M. Dig., § 270; Pope's Dig., § 284; A.S.A. 1947, § 78-1103.

2-38-104. Duty and rights of taker-up or impounder.

(a)(1) Every person taking up any stray animal shall immediately, if the animal is marked or branded, proceed to the office of the clerk of the county court of the county in which the animal is taken up and shall cause the clerk to examine the State Brand Book.

(2) If it is found that the mark or brand upon the animal taken up is entered upon the book, the taker-up or impounder of the animal shall at once notify the owner of the mark or brand, of his or her having taken up the animal, giving an exact description thereof.

(3)(A) The taker-up or impounder of an animal shall receive a reasonable compensation for his or her trouble.

(B) If the animal is taken from the range where the stock of the owner is accustomed to be kept, the taker-up or impounder shall receive nothing.

(b) No person shall use, work, or exercise any acts of ownership over any animal taken up by him or her until he or she shall have given notice thereof to the county court clerk. However, he or she may ride the animal to the county court for the purpose of giving the notice to the clerk.

History. Rev. Stat., ch. 58, §§ 2, 24; Pope's Dig., §§ 285, 310; A.S.A. 1947, Acts 1875, No. 50, § 1, p. 130; 1883, No. 121, § 1, p. 298; C. & M. Dig., §§ 271, 296; §§ 78-1104, 78-1130.

CASE NOTES

Larceny.

In a prosecution for larceny of the animals of another, one may set up as a defense his or her effort to comply with the stray laws; where such laws are not com-

plied with, that fact may be considered by jury in determining whether accused took the animals with a felonious intent. *Blackshare v. State*, 94 Ark. 548, 128 S.W. 549 (1910).

2-38-105. Certificate of examination.

Upon the taker-up of any animal causing examination of the State Brand Book to be made by the county clerk as prescribed in § 2-38-104, the county clerk shall give to the impounder a certificate of the examination having been made, setting out in the certificate the description of the animal and the marks and brands, or either thereof, and the impounder shall pay the clerk twenty-five cents (25¢) as a fee for the certificate.

History. Acts 1883, No. 121, § 2, p. 298; C. & M. Dig., § 272; Pope's Dig., § 286; A.S.A. 1947, § 78-1105.

2-38-106. Posting description of animal.

(a) Upon failure to find any record of the mark or brand of the animal taken up or when the person in whose name the mark or brand is found recorded proves not to be the owner of the animal, the taker-up or impounder of the animal shall put or cause to be put up posters in three (3) of the most public places in the township or neighborhood where the animal is taken up, giving a full detailed description of the animal, stating the marks, age, color, and value of the animal. At the same time, the taker-up or impounder shall deliver to the clerk of the county court a copy of the poster, and the clerk shall at once enter a full copy of the poster in a book to be kept by him or her for that purpose and shall set up the poster upon the courthouse door.

(b) If, at the expiration of ten (10) days from the date of the poster, the animal has not been proved away, it shall be the duty of the impounder to give notice to the nearest justice of the peace of the county of the taking up of the animal. The impounder shall, at the time of giving notice, file with the justice of the peace the certificate of the clerk of the county court of the examination of the record of marks and brands if the animal taken up is marked or branded.

(c) If the animal should be proved away as provided in this section, it shall be the duty of the person proving away the animal to pay a reasonable charge for feeding and advertising the animal if the animal has not been used by the person taking it up. In this case no charge shall be made for feeding and advertising.

History. Acts 1883, No. 121, § 3, p. 298; C. & M. Dig., §§ 273, 274; Pope's Dig., §§ 287, 288; A.S.A. 1947, § 78-1106.

2-38-107. Oath of taker-up.

In addition to the notice required by law to be given to a county clerk of taking up of strays, it shall be the duty of the taker-up, at the time of giving the notice, to take also an oath before the clerk that the stray was taken up on the farm of the person, or in his or her immediate vicinity, and that he or she had no agency in bringing the stray into the vicinity.

History. Acts 1840, § 1, p. 94; C. & M. Dig., § 275; Pope's Dig., § 289; A.S.A. 1947, § 78-1107.

2-38-108. Certificate of appraisement.

(a) Every justice of the peace, on receiving notice of any animal being taken up, shall forthwith appoint three (3) appraisers, who shall be citizen householders of the county, to appraise and describe the animal.

(b)(1) The appraisers appointed shall, as soon as practicable, proceed to view the animal and make out a detailed description, stating the marks, brands, age, color, stature, and value thereof, which description

and valuation shall be signed by the appraisers and sworn to before the justice appointing them.

(2) For their services, they shall each receive the sum of fifty cents (50¢).

(c) The description and valuation so sworn to shall be delivered by the appraisers to the justice of the peace, who shall deliver to the person taking up the animal a copy thereof.

(d) The original of the certificate of appraisalment of the justice shall, within ten (10) days, be deposited in the office of the clerk of the county court of his or her county.

(e) The justice, at the time of depositing the certificate of appraisalment with the clerk for record, shall also file with the clerk the bond required by this subchapter, which bond shall be kept by the clerk.

History. Rev. Stat., ch. 58, §§ 3-6, 8; Acts 1893, No. 12, § 1, p. 18; C. & M. Dig., §§ 276-279, 281; Pope's Dig., §§ 290-293, 295; A.S.A. 1947, §§ 78-1108 — 78-1111, 78-1113.

Cross References. Clerk's fee for entering appraised value, § 21-6-406.

2-38-109. Bond of taker-up.

(a) Every person taking up an animal as a stray shall, at the time of the appraisalment, enter into bond to the State of Arkansas, with sufficient security to be approved by the justice of the peace who appoints the appraisers, in the value of the animal. The bond shall be conditioned that, if the owner of the animal within one (1) year from the date shall appear and prove his or her property in the animal so taken up, then the taker-up will deliver the animal or, if the owner should fail to prove his or her property therein within one (1) year, conditioned that he or she, the obligor, will pay into the county treasury one-half (½) of the appraised value, deducting all legal expenses of the animal, stating the amount of the appraisalment.

(b) If the animal is a hog, the conditions of the bond shall be that if the owner of the animal, within three (3) months from the date, shall appear and prove his or her property in the animal so taken up then he or she will deliver the animal or that if the owner should fail to prove his or her property therein within three (3) months, then he or she, the obligor, will pay into the county treasury one-half (½) of the appraised value, deducting all legal expenses of the animal.

History. Acts 1843, § 38, p. 130; 1901, No. 204, § 1, p. 370; C. & M. Dig., § 280; Pope's Dig., § 294; A.S.A. 1947, § 78-1112.

2-38-110. Records.

It shall be the duty of every clerk of the county court to keep a book in which he or she shall record all descriptions and valuations of animals taken. He or she shall also note on all bonds required to be

deposited in his or her office under the provisions of this subchapter the time of filing them and keep the bonds safely for the use of the county.

History. Rev. Stat., ch. 58, § 9; C. & M. Dig., § 282; Pope's Dig., § 296; A.S.A. 1947, § 78-1114.

2-38-111. Advertisements to be posted.

(a) The person taking up any animal under the provisions of this subchapter shall immediately make out, from the copy of the appraisal delivered to him or her by the justice of the peace, four (4) advertisements and put them up in the most public places in his or her township and county.

(b) If any person shall fail to advertise any stray according to laws in force, he or she shall be deemed guilty of a misdemeanor. Upon conviction, an offender shall be fined in any sum not less than five dollars (\$5.00) nor more than fifty dollars (\$50.00), to be recovered by indictment or information in the county where the stray may have been taken up.

History. Rev. Stat., ch. 58, § 10; Acts 1842, § 3, p. 25; C. & M. Dig., §§ 283, 302; Pope's Dig., §§ 297, 316; A.S.A. 1947, §§ 78-1115, 78-1118.

2-38-112. Publication in addition to posting.

If the animal taken up is a horse, mare, mule, jack, or jenny, the taker-up shall cause a copy of the description and appraisal to be inserted in some newspaper printed in the state for three (3) weeks if the animal is of the appraised value of at least twenty dollars (\$20.00). Publication shall be commenced in the newspaper within one (1) month after appraisal. This shall be done in addition to the advertisement required by this subchapter.

History. Rev. Stat., ch. 58, § 11; C. & M. Dig., § 284; Pope's Dig., § 298; A.S.A. 1947, § 78-1116.

2-38-113. Payment of expenses.

If the owner of any stray horse, mare, mule, jack, or jenny does not prove the stray according to law within twenty (20) days from the time the animal was taken up, the person taking it up shall pay the county clerk all fees, the necessary postage, and the price of the advertisement. The clerk shall immediately transmit, by mail or otherwise, to the printer a copy of the appraisal of the stray and shall account to the printer for all money received by him or her for printing.

History. Rev. Stat., ch. 58, § 25; Acts 1846, § 7, p. 28; C. & M. Dig., § 285; Pope's Dig., § 299; A.S.A. 1947, § 78-1117.

2-38-114. Stray pen — Exhibition.

(a) It shall be the duty of the county court, at the expense of the county, to provide a pound lot or stray pen sufficient to contain all stray horses, mares, mules, jacks, or jennies which may be taken up in their respective counties. The stray pen shall be within one-half ($\frac{1}{2}$) mile of the courthouse.

(b) On the first day of the next term of the circuit court of his or her county, every person taking up any horse, mare, mule, jack, or jenny shall take the animal to the stray pen of his or her county and keep it there, subject to the inspection of all persons from 11:00 a.m. until 3:00 p.m. of each day.

History. Rev. Stat., ch. 58, §§ 12, 13; C. & M. Dig., §§ 286, 287; Pope's Dig., §§ 300, 301; A.S.A. 1947, §§ 78-1119, 78-1120.

CASE NOTES**Exhibition Required.**

Title to any of the animals mentioned in this section cannot be acquired by virtue of the stray laws unless the person taking it up exhibits it in the stray-pen of the

county on the first day of the next term of the circuit court of his or her county. *Smith v. Williams*, 95 Ark. 587, 130 S.W. 168 (1910).

2-38-115. Reclamation by owner.

(a) Within one (1) year from the time of the filing of the bond required by law, if the owner of any stray animal shall appear and claim it, he or she shall notify the taker-up; and the owner shall establish his or her claim to the animal before some justice of the peace of the county by such evidence as shall be satisfactory to the justice.

(b) Upon the justice being satisfied of the ownership of the animal taken up, he or she shall make an order in writing requiring the taker-up of the animal to deliver it to the owner when he or she pays the legal costs that have accrued thereon.

(c)(1) The person having the animal proved and required to be given up by the justice's order shall deliver it to the owner on receiving the amount of cost legally due and shall take a receipt endorsed on the justice's order for the animal.

(2) The order and receipt shall be filed with the clerk of the county court of the proper county, upon the filing of which, the bond shall be deemed to be cancelled.

History. Rev. Stat., ch. 58, §§ 14-16; Acts 1842, § 1, p. 25; C. & M. Dig., §§ 288-290; Pope's Dig., §§ 302-304; A.S.A. 1947, §§ 78-1121 — 78-1123.

CASE NOTES

Appeal.

An appeal does not lie from an order of a justice of the peace made under this

section. *Langley v. Barkman*, 23 Ark. (10 Barber) 293 (1861).

2-38-116. Refusal to deliver.

If any person who has taken up any animal shall refuse to deliver it to the owner on his or her having complied with the requirements of this subchapter, as respects proving ownership of the animal, the owner shall have a right of civil action. If the owner recovers in an action, he or she shall also recover double costs.

History. Rev. Stat., ch. 58, § 18; C. & M. Dig., § 292; Pope's Dig., § 306; A.S.A. 1947, § 78-1125.

Cross References. Replevin, § 18-60-809.

CASE NOTES

Replevin.

The owner of a posted animal cannot maintain replevin therefor until he or she has proved his or her property before a justice of the peace and paid or tendered the costs to the taker-up. *Phelan v. Bonham*, 9 Ark. (4 English) 389 (1849); *Davis v. Calvert*, 17 Ark. (4 Barber) 85 (1856).

In replevin action, evidence of noncompliance with stray laws supported finding that taker-up fraudulently concealed cause of action from owner. *Conditt v. Holden*, 92 Ark. 618, 123 S.W. 765 (1909).

2-38-117. Compensation for keeping strays.

(a) No person shall charge anything for keeping any horse, mare, mule, jack, or jenny which may be worked or ridden while in the possession of the taker-up.

(b) For the keeping of other animals, or the named animals if not worked or ridden, the person taking them up shall be entitled to a reasonable compensation to be adjudged by the justice of the peace before whom the owner proves his or her right of property.

History. Rev. Stat., ch. 58, § 20; C. & M. Dig., § 293; Pope's Dig., § 307; A.S.A. 1947, § 78-1126.

2-38-118. No premature disposition of strays.

(a) No person taking up any animal shall sell, exchange, or dispose of it in any manner nor kill any domesticated cattle, hogs, or sheep until after the expiration of the time that the owner has the right to prove his or her property in them.

(b) Any person violating the provisions of subsection (a) of this section shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined in any sum not less than half nor more than double

appraised value of the stray so taken up, to be recovered in the county where the stray may have been taken up.

History. Rev. Stat., ch. 58, § 21; Acts Pope's Dig., §§ 308, 317; A.S.A. 1947, 1842, § 2, p. 25; C. & M. Dig., §§ 294, 303; §§ 78-1127, 78-1128.

2-38-119. Liability for death or escape of animals.

If any stray animals die or escape from the possession of the taker-up before the owner shall establish his or her right thereto, and if the death or escape is without the fault of the person having the lawful possession thereof, he or she shall not be liable for it.

History. Rev. Stat., ch. 58, § 22; C. & M. Dig., § 295; Pope's Dig., § 309; A.S.A. 1947, § 78-1129.

2-38-120. Forfeiture of right to animal.

If the owner of any stray animal shall not appear and prove his or her property therein within one (1) year after the time of setting up the copies of the valuation and description of the animal and the filing of the bond required, he or she shall forfeit his or her right to the animal and the property shall be vested in the taker-up of it.

History. Rev. Stat., ch. 58, § 17; C. & M. Dig., § 291; Pope's Dig., § 305; A.S.A. 1947, § 78-1124.

2-38-121. Payment and filing required for unclaimed strays.

(a)(1) Every person who shall take up a stray animal which shall not be reclaimed by the owner within one (1) year shall pay into the county treasury of the county in which the stray was taken up one-half ($\frac{1}{2}$) of the residue after deducting all legal expenses from the appraised value of the animal and shall file the county treasurer's receipt for it in the office of the county clerk.

(2)(A) The county clerk shall charge the county treasurer with all such funds as shall be paid into the treasury; and

(B) These funds shall be apportioned among the several districts of the county as other funds are apportioned.

(b) After the term of one (1) year from the taking up of any animal, if the order of the justice of the peace requiring the taker-up of the animal to return the animal to the owner, with the owner's receipt thereon, shall not be filed with the clerk, or the one-half ($\frac{1}{2}$) of the appraised value paid into the treasury, and the county treasurer's receipt filed with the clerk, the clerk shall issue a notice to the delinquent to appear at the next session of the county court for that county and show cause, if any he or she can, why judgment shall not be entered against him or her, in favor of the state, for the benefit of the county.

(c) The notice shall be delivered by the clerk to the sheriff and served by him or her on the person.

(d)(1) If no sufficient cause is shown, the court shall enter judgment against the delinquent for the amount due the county, with costs, and execution shall issue for it as in other cases.

(2) The cause shall be tried without the necessity of formal pleadings.

History. Rev. Stat., ch. 58, §§ 26-28; Dig., §§ 311-314; A.S.A. 1947, §§ 78-1131 Acts 1845, § 1, p. 100; 1897, No. 40, § 1, — 78-1134. p. 52; C. & M. Dig., §§ 297-300; Pope's

2-38-122. Judgment for costs.

If any person shall fail to file with the clerk of the county the treasurer's receipt or the receipt of the owner of the animal for which he or she executed his or her bond on taking it up, although he or she may have paid the amount due on the bond to the county treasurer or returned the animal in question to the proper owner, the court shall enter judgment against him or her for all costs.

History. Rev. Stat., ch. 58, § 29; C. & M. Dig., § 301; Pope's Dig., § 315; A.S.A. 1947, § 78-1135.

SUBCHAPTER 2 — STALLIONS, MULES, AND JACKS

SECTION.

2-38-201. [Repealed.]

2-38-202. Right of person taking up.

SECTION.

2-38-203. Right to kill certain stock — Notice.

RESEARCH REFERENCES

Ark. L. Rev. Legislative and Judicial Dynamism in Arkansas: Poisson v. d'Avril, 22 Ark. L. Rev. 724.

CASE NOTES

ANALYSIS

Knowledge of Owner.

Owner.

"Running at Large".

Knowledge of Owner.

Owner of unaltered mule held not liable for damages where mule had broken out during the night without the owner's knowledge. *Briscoe v. Alfrey*, 61 Ark. 196, 32 S.W. 505 (1895).

Owner.

The word "owner" does not mean the one having absolute title but the one having the right to possession and control of the animal. *Fraser v. Hawkins*, 137 Ark. 214, 208 S.W. 296 (1919).

"Running at Large".

Where a stallion broke out of his or her enclosure without his or her owner's knowledge, but was knowingly permitted to remain in another pasture without the

other’s consent, the animal was “running at large.” Fraser v. Hawkins, 137 Ark. 214, 208 S.W. 296 (1919).

Cited: Field v. Viraldo, 141 Ark. 32, 216 S.W. 8 (1919).

2-38-201. [Repealed.]

Publisher’s Notes. This section, concerning horses, mules or jacks running at large, was repealed by Acts 2005, No. 1994, § 533. The section was derived from

Rev. Stat., ch. 74, § 1; C. & M. Dig., § 344; Pope’s Dig., § 359; A.S.A. 1947, § 78-1136.

2-38-202. Right of person taking up.

- (a)(1) Any person may take up any seed horse, mule, or jack found running at large and, if not claimed within two (2) days, may castrate him.
- (2) For this service, he or she shall be entitled to recover from the owner of any horse, mule, or jack, three dollars (\$3.00), which may be recovered in a civil action before any justice of the peace of the county.
- (b) Castration shall be done in the usual manner, so that the life of the animal shall be endangered as little as possible.

History. Rev. Stat., ch. 74, §§ 2, 3; C. & M. Dig., §§ 345, 346; Pope’s Dig., §§ 360, 361; A.S.A. 1947, §§ 78-1137, 78-1138.

2-38-203. Right to kill certain stock — Notice.

If any horse, mule, or jack is running at large and cannot be taken up, it may be killed, if notice is first put up at the courthouse and at three (3) other of the most public places in the county, for ten (10) days, describing the color, marks, and brands, as nearly as practicable, of the animal and that it will be killed unless taken away and secured.

History. Rev. Stat., ch. 74, § 4; C. & M. Dig., § 347; Pope’s Dig., § 362; A.S.A. 1947, § 78-1139.

SUBCHAPTER 3 — ANIMALS COVERED BY INITIATED ACTS

SECTION.	SECTION.
2-38-301. Running at large unlawful when prohibited.	2-38-303. Notice to owners of hogs and goats.
2-38-302. Penalty for failing to take up trespassing animals.	

RESEARCH REFERENCES

Ark. L. Rev. Absolute Liability in Arkansas, 8 Ark. L. Rev. 83.

2-38-301. Running at large unlawful when prohibited.

(a) In all counties of this state where there has been or may be submitted to the people by initiative petition a proposed act prohibiting horses, mules, cattle, hogs, sheep, and goats, or any of them, from running at large in the county and at an election held pursuant thereto, the electors voting thereon have enacted or shall enact such an act, it shall be unlawful from the effective date of the act for any animals, at any time during the year, to run at large and enter in and upon the fields and lands of the county, either enclosed or unenclosed.

(b)(1) In every case of trespass by an animal described and prohibited by the initiated act, the owner of the animal shall be liable, for all damages it may do, to the person owning crops, to be established and recovered in a civil action.

(2) A lien shall exist against the animal in favor of the person whose crops may have been damaged or destroyed, and they may be sold under an order of the court rendering judgment for damages, to which shall be added any and all costs of taking up, feeding, and caring for the animal, and other costs.

History. Acts 1947, No. 199, § 1; A.S.A. 1947, § 78-1140.

2-38-302. Penalty for failing to take up trespassing animals.

(a)(1) Any owner of an animal upon receiving notice either verbal or otherwise that the animal is at large and trespassing upon the land, premises, and crops of another person shall immediately take up the animal and thereafter confine it so that further depredations and damages shall be avoided.

(2)(A) If for twenty-four (24) hours after notification being given to him or her, the owner shall fail, neglect, or refuse to take up the animal upon being notified that his or her animal is running at large and trespassing, the owner shall be guilty of a violation and upon conviction shall be fined a sum not less than ten dollars (\$10.00) nor more than fifty dollars (\$50.00).

(B) Each day the animal continues to run at large shall constitute a separate offense.

(b) When any initiated act duly adopted by the electors as provided prescribes penalties, the penalties of this section shall be cumulative and in addition to the penalties prescribed by the initiated act.

History. Acts 1947, No. 199, §§ 2, 3; in (a)(2)(A), substituted “violation” for A.S.A. 1947, §§ 78-1141, 78-1142; Acts “misdemeanor” and made gender neutral 2005, No. 1994, § 21.

Amendments. The 2005 amendment,

2-38-303. Notice to owners of hogs and goats.

Hogs and goats when permitted to run at large are especially destructive of growing and unharvested crops of corn, oats, other small grains, and of winter cover crops; they are especially difficult and often practically impossible to catch and take up when preying upon these crops. To protect these crops, the animals must be removed or their destructiveness stopped without long delay. Therefore, a notice of twenty-four (24) hours shall be deemed sufficient to enable the owners of these animals to take up and confine them, the notice being sufficient if given verbally or otherwise to the owner, his or her agent, or his or her servant. If these animals are not taken up and confined, any person interested in the preservation of the crops either as landlord, tenant, cropper, or the agent or servant of either of them, may kill and destroy any offending hogs or goats and shall not be liable in damages for, or for the value of, the destroyed animals to any person because of having done so.

History. Acts 1947, No. 199, § 4; A.S.A. 1947, § 78-1143.

SUBCHAPTER 4 — ANIMALS ON PUBLIC HIGHWAYS

SECTION.

2-38-401. Purpose.

2-38-402. Duty to impound.

2-38-403. Enclosures.

2-38-404. Delivery to enclosure.

SECTION.

2-38-405. Notice of impounding.

2-38-406. Reclaiming by owner.

2-38-407. Sale of unclaimed animals.

2-38-408. Disposition of funds.

Effective Dates. Acts 1955, No. 145, § 9: Mar. 4, 1955. Emergency clause provided: “It has been found and is declared by the General Assembly of Arkansas that animals running at large along and on the public highways of the State of Arkansas constitute a hazard to travelers upon said highways and have caused numerous highway accidents which have resulted in serious and painful injury and death to travelers upon the highway, and that the penalties provided for any person permit-

ting animals to run at large upon the highway have been ineffective to eliminate this traffic hazard, and that there is urgent need for immediate action to render travel upon the highways less hazardous, and the enactment of this bill will reduce the hazards of highway travel. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health and safety it shall take effect and be in force from the date of its approval.”

CASE NOTES

Enactment.

This subchapter did not have the effect of amending Initiated Act No. 1 of 1950

[repealed] so as to require passage by a two-thirds vote of all the members of each house of the General Assembly under the

provisions of Ark. Const. Amend. 7.
Staples v. Bishop, 225 Ark. 936, 286
S.W.2d 505 (1956).

2-38-401. Purpose.

It is the purpose of this subchapter to provide for more effective enforcement of the prohibition against cattle, horses, mules, hogs, sheep, or goats being allowed to run at large along or on any public highway in the State of Arkansas in violation of § 5-62-122.

History. Acts 1955, No. 145, § 1; A.S.A.
1947, § 78-1144.

2-38-402. Duty to impound.

It shall be the duty of the Department of Arkansas State Police and the sheriffs of the respective counties to restrain and impound any cattle, horses, mules, hogs, sheep, or goats found running at large along or on any public highway in the State of Arkansas.

History. Acts 1955, No. 145, § 2; A.S.A.
1947, § 78-1145.

2-38-403. Enclosures.

It shall be the duty of the county court of each county to provide an appropriate enclosure at the county farm or at some other place within the county for the impounding of cattle, horses, mules, hogs, sheep, or goats found running at large along or on any public highway in this state.

History. Acts 1955, No. 145, § 3; A.S.A.
1947, § 78-1146.

2-38-404. Delivery to enclosure.

(a) Any member of the Department of Arkansas State Police or any sheriff or deputy sheriff of any county who discovers or is advised of an animal running at large along or on any public highway shall arrange for the animal to be taken up and delivered to the enclosure provided by the county court in the county where the animal is at large.

(b) The cost of taking up and delivering the animal shall be borne by the county in which the animal is found running at large.

History. Acts 1955, No. 145, § 4; A.S.A.
1947, § 78-1147.

2-38-405. Notice of impounding.

When an animal found running at large along or on any public highway is delivered to the enclosure provided by the county court, the sheriff shall give notice of the impounding of the animal by causing a description of the animal to be inserted in some newspaper of general circulation in the county at least once a week for three (3) weeks. In addition to a description of the animal, the published notice shall also state the place where the animal was found running at large and the date and time of its being taken up.

History. Acts 1955, No. 145, § 5; A.S.A. 1947, § 78-1148.

2-38-406. Reclaiming by owner.

(a) The owner of any animal impounded under the provisions of this subchapter shall be permitted at any time within thirty (30) days from the date of first publication of notice of the impounding of the animal to reclaim the animal upon the payment of all costs incurred by the county in connection with the taking up and delivery of the animal to the enclosure, the feeding and care of the animal while impounded, and the cost of publication of notice.

(b)(1) The animal shall be delivered to the owner if reclaimed in accordance with the provisions of this subchapter at the enclosure provided by the county court.

(2) All costs in connection with the removal of the animal from the enclosure shall be borne by the owner.

(c) The owner shall establish his or her claim to the animal before the sheriff by evidence as shall be satisfactory to the sheriff.

History. Acts 1955, No. 145, § 6; A.S.A. 1947, § 78-1149.

CASE NOTES**Constitutionality.**

This section does not compel an owner of stock to be a witness against himself or herself in violation of Ark. Const., Art. 2, § 8, as it does not require an owner to reclaim his or her impounded stock but only permits it, and an owner by reclaiming his or her stock does not thereby admit

that he or she has violated statutes prohibiting stock from running at large, as owner can only be guilty of violating these statutes if he or she knowingly permits his or her stock to run at large. *Staples v. Bishop*, 225 Ark. 936, 286 S.W.2d 505 (1956).

2-38-407. Sale of unclaimed animals.

If, at the expiration of thirty (30) days after notice was first posted, an animal found running at large along or on any public highway has not been claimed by its true owner, then it shall be the duty of the sheriff to sell the animal at public sale to the highest bidder after posting notice of sale in the courthouse for five (5) days.

History. Acts 1955, No. 145, § 7; A.S.A. 1947, § 78-1150.

2-38-408. Disposition of funds.

(a)(1) The county shall be entitled to one dollar (\$1.00) per day for each animal found running at large along or on any public highway and impounded.

(2) The sum shall be paid by the claimant-owner, as provided in § 2-38-406, or from the proceeds of the sale of the animal.

(b)(1) If there is a balance remaining after the expenses are deducted from the proceeds of the sale, the balance shall be deposited in a special fund in the name of the sheriff.

(2) If the proceeds are not sufficient to pay the expenses incurred as provided in this section, the balance may be withdrawn from the fund provided for in subdivision (b)(1) of this section.

(3) At the end of each calendar year, any balance in this fund shall be deposited with the county treasurer to the credit of the county road fund.

History. Acts 1955, No. 145, § 8; A.S.A. 1947, § 78-1151.

SUBCHAPTER 5 — FERAL HOGS

SECTION.

2-38-501. Definition.

2-38-502. Hunting.

SECTION.

2-38-503. Animal health requirements.

2-38-504. Releasing hogs into the wild.

2-38-501. Definition.

As used in this subchapter:

(1) “Feral hog” means any hog of the species *Sus scrofa*, including a Russian or European wild boar, that is roaming freely upon public land or private land:

(A) That is not enclosed with a fence sufficient under § 2-39-101 et seq.; and

(B) Without the landowner’s permission;

(2)(A) “Feral hog” does not include a stray domestic hog that has escaped from domestic confinement for less than five (5) calendar days.

(B) If the owner of the stray domestic hog provides notice of the escape to all adjacent landowners within five (5) calendar days of the escape, the stray domestic hog is not considered a “feral hog” for an additional ten (10) calendar days following the initial five-day period; and

(3) A “feral hog” is deemed to be domestic livestock.

History. Acts 1999, No. 457, § 1; 2007, No. 827, § 5.

Amendments. The 2007 amendment rewrote the section.

2-38-502. Hunting.

Notwithstanding any provision of this chapter, any person may take and kill a feral hog except that:

(1) A feral hog taken on public property during any established hunting season must be taken with a weapon and method allowed for that hunting season;

(2) A feral hog may be taken on any land where the hunter has legal access unless prohibited by the landowner; and

(3) No person whose hunting license is revoked may take or kill a feral hog during the period of the revocation.

History. Acts 1999, No. 457, § 1.

2-38-503. Animal health requirements.

A feral hog shall be subject to animal health requirements established by the Arkansas Livestock and Poultry Commission.

History. Acts 1999, No. 457, § 5.

2-38-504. Releasing hogs into the wild.

(a) Unless the landowner has consented, any person who knowingly releases any hog to live in a wild or feral state upon public land or private land is in violation of this section.

(b) Any person who violates this section shall be guilty of a violation and upon conviction shall be subject to a fine not to exceed five hundred dollars (\$500).

History. Acts 1999, No. 457, § 3; 2005, No. 1994, § 22; 2007, No. 827, § 6. The 2007 amendment substituted “knowingly” for “willfully” in (a).

Amendments. The 2005 amendment substituted “violation” for “misdemeanor” in (b).

CHAPTER 39

FENCES

SECTION.

2-39-101. Kinds required for enclosures.

2-39-102. Definition of fence.

2-39-103, 2-39-104. [Repealed.]

2-39-105. Maintenance of division fences.

2-39-106. Sufficiency.

2-39-107. View of fence.

SECTION.

2-39-108. Animals breaking into enclosures.

2-39-109. Damage by motor vehicle.

2-39-110. Liability for injuring animals.

2-39-111. Liability for damaging fence, etc.

Cross References. Leaving gate open or tearing down fence, § 18-60-104.

Removal of fences when erroneously placed, § 18-60-105.

Effective Dates. Acts 1881, No. 77, § 2: effective on passage.

Acts 1899, No. 100, § 2: effective on passage.

Acts 1899, No. 104, § 3: effective on passage.

RESEARCH REFERENCES

Am. Jur. 3 Am. Jur. 2d, Animals, § 49 et seq.

Ark. L. Rev. Absolute Liability in Arkansas, 8 Ark. L. Rev. 83.

C.J.S. 3A C.J.S., Animals, § 140.

2-39-101. Kinds required for enclosures.

All fields and grounds kept for enclosures shall be enclosed with a fence.

History. Rev. Stat., ch. 76, § 1; Acts 1899, No. 104, § 1, p. 168; C. & M. Dig., § 4645; Pope's Dig., § 5734; A.S.A. 1947, § 78-1201; Acts 2001, No. 176, § 1.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2001 Arkansas General As-

sembly, Agricultural Law, 24 U. Ark. Little Rock L. Rev. 403.

2-39-102. Definition of fence.

As used in this chapter and all laws referring to this chapter, "fence" means a barrier sufficient to indicate an intent to restrict an area to human, livestock, or vehicle ingress or egress.

History. Rev. Stat., ch. 76, §§ 2, 3; Acts 1899, No. 104, § 2, p. 168; C. & M. Dig., §§ 4646, 4647; Pope's Dig., §§ 5735, 5736;

A.S.A. 1947, §§ 78-1202, 78-1203; Acts 2001, No. 176, § 2.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2001 Arkansas General As-

sembly, Agricultural Law, 24 U. Ark. Little Rock L. Rev. 403.

2-39-103, 2-39-104. [Repealed.]

Publisher's Notes. These sections, concerning wire fences, were repealed by Acts 2001, No. 176, § 3. The sections were derived from the following sources:

2-39-103. Acts 1881, No. 77, § 1, p. 145; 1889, No. 87, § 1, p. 117; C. & M. Dig.,

§ 4648, Pope's Dig., § 5737, A.S.A. 1947, § 78-1204.

2-39-104. Acts 1899, No. 100, § 1, p. 163; C. & M. Dig., § 4649; Pope's Dig., § 5738; A.S.A. 1947, § 78-1205.

For present law, see § 2-39-102.

2-39-105. Maintenance of division fences.

When any person shall enclose any land adjoining another's land already enclosed with a fence so that any part of the fence first made becomes the partition fence between them, then, in such case, the charge of the division fence, as far as it is enclosed on both sides, shall be equally borne and maintained by both parties.

History. Rev. Stat., ch. 76, § 8; C. & M. Dig., § 4654; Pope's Dig., § 5743; A.S.A. 1947, § 78-1210.

CASE NOTES

ANALYSIS

Conveyance.

Failure to Maintain.

Conveyance.

An agreement for the conveyance of an undivided interest in a partition fence must be in writing. *Rudisill v. Cross*, 54 Ark. 519, 16 S.W. 575 (1891).

Failure to Maintain.

Failure to maintain his or her half of division fence renders adjoining landowner liable for damages. *Primrose v. Brown*, 173 Ark. 632, 292 S.W. 1003 (1927).

The obligation of adjoining landowners to maintain a partition fence being mutual, one who failed to stop holes in such a fence could not complain of damages by hogs of the adjoining proprietor. *Wilkinson v. White*, 182 Ark. 1014, 33 S.W.2d 365 (1930).

Plaintiff could not recover damages due to defendant's cattle coming through hole in fence and eating hay where high waters made hole in fence, since it was the duty of the plaintiff as well as the defendant to repair fence. *Kennard v. Fudge*, 219 Ark. 157, 240 S.W.2d 664 (1951).

2-39-106. Sufficiency.

In all cases, the sufficiency of a fence shall be judged by the persons summoned to view the fence in accordance with the provisions of this chapter.

History. Rev. Stat., ch. 76, § 4; C. & M. Dig., § 4650; Pope's Dig., § 5739; A.S.A. 1947, § 78-1206.

2-39-107. View of fence.

Upon the complaint of the party injured to any justice of the peace of the township, the justice shall issue an order to three (3) disinterested householders of the neighborhood not related to the parties, reciting the complaint and requiring them to view the fence where the trespass is complained of and take a memorandum of it. Their testimony in that case shall be good evidence on the trial touching the lawfulness of the fence.

History. Rev. Stat., ch. 76, § 6; C. & M. Dig., § 4652; Pope's Dig., § 5741; A.S.A. 1947, § 78-1208.

2-39-108. Animals breaking into enclosures.

If any horse, cattle, or other stock shall break into any enclosure or if any hog, pig, or shoat shall break into any enclosure, the owner of the creature shall:

(1) For the first trespass, make reparation to the party injured for the true value of the damages he or she may have sustained;

(2) For every trespass after the first trespass, double damages to be recovered with costs, before any justice of the peace or court having jurisdiction over the trespass, in the name of the injured party; and

(3) For the third offense from any animal named breaking into the enclosure, the party injured may kill and destroy the animal so trespassing without being answerable for it.

History. Rev. Stat., ch. 76, § 5; C. & M. Dig., § 4651; Pope's Dig., § 5740; A.S.A. 1947, § 78-1207; Acts 2001, No. 176, § 4.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of assembly, Agricultural Law, 24 U. Ark. Legislation, 2001 Arkansas General As- Little Rock L. Rev. 403.

2-39-109. Damage by motor vehicle.

In instances where a motor vehicle damages the fence or gate belonging to a person other than himself or herself and the damage allows livestock to escape, the owner of the livestock shall not be liable for damage caused by the livestock until he or she has had actual notice of their escape and a reasonable opportunity to repair the fence or gate and recover the livestock.

History. Acts 1981, No. 498, § 2; A.S.A. 1947, § 78-1207.1.

2-39-110. Liability for injuring animals.

If any person damaged for the want of a sufficient fence shall hurt, wound, lame, or kill, or cause the same thing to be done by shooting, hunting with a dog, or otherwise, any animal mentioned in this chapter, with the exception of a feral hog, the person shall be liable to the owner of the animal for double damages, with costs.

History. Rev. Stat., ch. 76, § 7; C. & M. Dig., § 4653; Pope's Dig., § 5742; A.S.A. 1947, § 78-1209; Acts 1999, No. 457, § 2.

CASE NOTES

Evidence. 220 Ark. 208, 247 S.W.2d 203 (1952) (decision under prior law).
Evidence sufficient to support fine and judgment for damages. Napier v. State,

2-39-111. Liability for damaging fence, etc.

Any person who willfully cuts or otherwise damages the fence, gate, or gate lock of another shall be liable for triple damage plus attorney's fees and other costs.

History. Acts 1985, No. 906, § 1; A.S.A. 1947, § 78-1329.1.

CHAPTER 40
CONTROL OF CONTAGIOUS DISEASES

SUBCHAPTER

- 1. GENERAL PROVISIONS.
- 2. ARKANSAS LIVESTOCK AND POULTRY COMMISSION PROGRAMS.
- 3. DEAD ANIMALS GENERALLY.
- 4. DISPOSAL OF FOWL CARCASSES.
- 5. BRUCELLOSIS VACCINATION.
- 6. BRUCELLOSIS CONTROL AREAS.
- 7. HOG CHOLERA.
- 8. EQUINE INFECTIOUS ANEMIA.
- 9. TICK CONTROL PROGRAM.
- 10. CATTLE QUARANTINE LINES.
- 11. RABIES.
- 12. PSEUDORABIES CONTROL AND ERADICATION PROGRAM.
- 13. DISPOSAL OF LARGE ANIMAL CARCASSES.

A.C.R.C. Notes. References to "this chapter" in subchapters 1-12 may not apply to subchapter 13 which was enacted subsequently.

References to "this chapter" in subchapters 1-12 may not apply to § 2-40-508 which was enacted subsequently.

RESEARCH REFERENCES

A.L.R. Seller's liability for sale of live-stock infected with communicable disease. 14 A.L.R.4th 1096.

Am. Jur. 3 Am. Jur. 2d, Animals, § 32 et seq.

Ark. L. Notes. Looney, The Toothless Cow, the Little Bull That Couldn't, and Udder Matters: Livestock Warranties and the Uniform Commercial Code, 1990 Ark. L. Notes 75.

C.J.S. 3A C.J.S., Animals, § 66 et seq.

SUBCHAPTER 1 — GENERAL PROVISIONS

- SECTION.
2-40-101. Penalties.
- 2-40-102. Administration.
- SECTION.
2-40-103. Duties and enforcement.
- 2-40-104. Duty to report.

SECTION.

- 2-40-105. Inspectors and agents.
2-40-106. Examinations and findings.
2-40-107. Expenses.
2-40-108. Anthrax spore vaccine.

SECTION.

- 2-40-109. Destruction of diseased poultry flocks.
2-40-110. Canine brucellosis.

Effective Dates. Acts 1925, No. 224, § 6: effective on passage.

Acts 1929, No. 84, § 6: effective on passage. Emergency declared. Approved Mar. 2, 1929.

Acts 1981, No. 823, § 3: Mar. 28, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that the present laws are inadequate to protect the employees of the Arkansas Livestock and Poultry Commission from physical and mental abuse while they are engaged in carrying out their official duties; that this act is designed to clarify and increase the penalties for such interference and is essential to protect the health and well being of the employees of the commission and to enable them to effectively and efficiently carry out their responsibilities, and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 413, § 3: Mar. 26, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that when disease breaks out in a poultry flock, it may spread rapidly from that flock to other flocks nearby unless the diseased poultry is destroyed immediately; that in order to avoid the spread of

poultry disease, it is urgent that the Livestock and Poultry Commission be granted the authority to acquire diseased flocks of poultry through negotiation or condemnation and to destroy those flocks to prevent further spread of the disease; that this act grants such authority to the Livestock and Poultry Commission and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1995, No. 236, § 34: July 1, 1995. Emergency clause provided: "It is hereby found and determined by the Eightieth General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1995 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1995 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1995."

2-40-101. Penalties.

(a)(1) Any person who assaults or by force or violence resists, opposes, impedes, intimidates, or interferes with any employee of the Arkansas Livestock and Poultry Commission while the employee is engaged in the performance of his or her official duties or because the employee has carried out or is about to carry out his or her official duties shall be guilty of a Class A misdemeanor and shall be punished accordingly.

(2) If the person uses a dangerous or deadly weapon in the commission of the acts, the person shall be guilty of a Class D felony and shall be punished accordingly.

(b) Any person who without the use of force or violence resists, opposes, impedes, intimidates, or interferes with any employee of the commission while the employee is engaged in the performance of his or her official duties or because the employee has carried out or is about to carry out his or her official duties shall be guilty of a Class C misdemeanor and shall be punished accordingly.

(c)(1) Any person who shall bring into or cause to be brought into the state any animal suffering from a contagious or infectious disease or any animal that has been exposed to the contagion or infection of any disease, knowing the animal to have been so diseased or to have been so exposed, shall be guilty of a violation.

(2)(A) Upon conviction, an offender shall be fined in any sum not to exceed five hundred dollars (\$500).

(B) In addition, he or she shall be liable to others for damages due to infection from the animal.

History. Acts 1907, No. 409, §§ 4, 7, p. 1043; C. & M. Dig., §§ 351, 354; Pope's Dig., §§ 376, 379; Acts 1981, No. 823, § 1; A.S.A. 1947, §§ 78-404, 78-407; Acts 2005, No. 1994, § 23.

Amendments. The 2005 amendment inserted "or her" in (a)(1) and (b); and, in

(c), substituted "violation" for "misdemeanor" in the first sentence and inserted "or she" in the last sentence.

Cross References. Felonies, § 5-1-106.

Misdemeanors, § 5-1-107.

CASE NOTES

State Interest.

Pursuant to this section, there is a sufficient state interest in preventing the bringing of diseased cattle into the state to warrant the application of state law to an action for breach of implied and express

warranties and sale of diseased cattle where cattle were negotiated for and purchased in another state. *Threlkeld v. Worsham*, 30 Ark. App. 251, 785 S.W.2d 249 (1990).

2-40-102. Administration.

The duty of supervising the livestock sanitary work of this state for the purpose of preventing the introduction and spread of contagious or infectious animal diseases shall be vested in the Arkansas Livestock and Poultry Commission, which may depute to the State Veterinarian so much of the authority granted as it may deem wise and expedient for the prompt performance of the duties referred to in this chapter.

History. Acts 1907, No. 409, § 1, p. 1043; C. & M. Dig., § 348; Pope's Dig., § 363; A.S.A. 1947, § 78-401.

of Arkansas Livestock and Poultry Commission generally, § 2-33-107.

State Veterinarian, § 2-33-105.

Cross References. Powers and duties

2-40-103. Duties and enforcement.

(a) It shall be the duty of the Arkansas Livestock and Poultry Commission to:

(1) Inquire into all outbreaks of contagious or infectious disease of animals;

(2) Establish and promulgate such rules and regulations in regard to isolation or quarantine of infected animals, disinfection of animals and premises, destruction of incurably diseased animals, and disposal of carcasses as it may deem necessary to prevent the spread of disease;

(3) Make rules for preventing the spread of disease borne by milk or other dairy products;

(4) Promulgate regulations for the protection of areas from which animal diseases may be eradicated;

(5) Draft regulations for compensation for owners of exposed or diseased animals and contaminated equipment or other material unsuitable for proper disinfection or destroyed, or for others for any other necessary expenses or for any other purpose, indemnity being subject to available funds; and

(6) Promulgate regulations for the inspection of carcasses of slaughtered animals and sanitary conditions in and about packing houses slaughtering more than ten thousand (10,000) head of animals for human consumption each year.

(b) Any federal veterinary inspector working in Arkansas cooperating with the commission shall have the power of enforcing the rules and regulations of the commission.

History. Acts 1907, No. 409, §§ 2, 9, p. Pope's Dig., §§ 372, 381; A.S.A. 1947, 1043; C. & M. Dig., §§ 349, 356; Acts §§ 78-402, 78-410. 1925, No. 224, § 1; 1929, No. 84, § 1;

RESEARCH REFERENCES

Ark. L. Rev. Legal Control of Business in Arkansas, 5 Ark. L. Rev. 137.

2-40-104. Duty to report.

It shall be the duty of any owner or person in charge of any animals who discovers, suspects, or has reason to believe that any of his or her domestic animals, or domestic animals in his or her charge, are affected with any contagious or infectious disease, to immediately report the fact, belief, or suspicion to the Arkansas Livestock and Poultry Commission or to the State Veterinarian.

History. Acts 1907, No. 409, § 6, p. 1043; C. & M. Dig., § 353; Pope's Dig., § 378; A.S.A. 1947, § 78-406.

2-40-105. Inspectors and agents.

(a) The State Veterinarian of the Arkansas Livestock and Poultry Commission may appoint inspectors and agents to act under instructions from the State Veterinarian.

(b) The salary of inspectors and agents shall be determined by the commission and be paid out of such moneys of the commission as may be lawfully used for this purpose.

(c) Any employee of the Arkansas Livestock and Poultry Commission serving in the capacity of Livestock Inspector, Equine Infectious Anemia Inspector, or any position as delegated by the State Veterinarian, may also assume the responsibilities and perform in the capacity of a Livestock and Poultry Inspector/Investigator or National Poultry Improvement Plan Inspector.

History. Acts 1907, No. 409, § 8, p. 1043; C. & M. Dig., § 355; Pope's Dig., § 380; A.S.A. 1947, § 78-409; Acts 1995, No. 236, § 23.

U.S. Code. The National Poultry Improvement Plan, referred to in this section, is codified at 9 C.F.R. Part 145.

2-40-106. Examinations and findings.

(a)(1) Any veterinary inspector or other employee duly authorized by the Arkansas Livestock and Poultry Commission shall have the privilege of entering upon any property or premises in this state for the purpose of examining or testing animals which he or she has reason to believe are affected with a contagious or infectious disease so as to constitute a menace to the livestock of the community.

(2) In case of opposition or hindrance, he or she may call on one (1) or more peace officers. It shall be their duty to give him or her all assistance in their power.

(b)(1) When ordered by the State Veterinarian of the commission, owners or persons in charge of animals shall assemble them at a designated time and place for the purpose of examining, testing, treating, autopsy, disinfecting, or for any other purpose.

(2)(A)(i) If after examination of suspected animals the veterinary inspector shall find them to be affected with glanders or other contagious or infectious disease, he or she shall furnish the owner or person in charge of the animals with a report of his or her findings and with a copy of the existing law and rules and regulations of the commission in regard to the disease.

(ii) The inspector shall furnish a similar report and copy to the sheriff of the county and to the nearest town marshal or constable, whose duty it shall be to see that the rules and regulations are complied with.

(B) Any person who, after notification, shall fail to comply with the regulations shall be guilty of a misdemeanor. Upon conviction, an offender shall be fined in any sum not to exceed three hundred dollars (\$300). He or she shall also be liable for damages to others due to infection from his or her stock.

History. Acts 1907, No. 409, §§ 3, 5, p. 1929, No. 84, § 3; Pope's Dig., §§ 374, 1043; C. & M. Dig., §§ 350, 352; Acts 377; A.S.A. 1947, §§ 78-403, 78-405.

2-40-107. Expenses.

(a) The expenses which may be incurred by the sheriff or marshal in performing his or her duty, as prescribed in this chapter, shall be a valid claim against the county or city in which the services were rendered.

(b)(1) All expenses incurred by the State Veterinarian employed by the Arkansas Livestock and Poultry Commission in the performance of the duties referred to in this chapter shall be paid out of the fund appropriated to the University of Arkansas for this purpose.

(2) The conditions of this chapter shall be obligatory on the commission only while the appropriation is available.

History. Acts 1907, No. 409, § 17, p. 1043; C. & M. Dig., § 364; Pope's Dig., § 389; A.S.A. 1947, § 78-411.

2-40-108. Anthrax spore vaccine.

It shall be unlawful to use or sell anthrax spore vaccine in any territory, county, or parts thereof where anthrax has been diagnosed and found to exist, unless with the advice and consent of the Arkansas Livestock and Poultry Commission.

History. Acts 1907, No. 409, § 16, p. 224, § 2; Pope's Dig., § 388; A.S.A. 1947, 1043; C. & M. Dig., § 363; Acts 1925, No. § 78-604.

2-40-109. Destruction of diseased poultry flocks.

(a) When the Arkansas Livestock and Poultry Commission determines that any flock of chickens, turkeys, ducks, geese, or other poultry is diseased and that the flock should be destroyed and properly disposed of to prevent the spread of the disease, the commission may negotiate for and buy that flock at a price that would reasonably approximate the market value of that flock if it were not diseased and may dispose of the diseased poultry in such manner as it deems appropriate to prevent the spread of the disease.

(b) If the commission is unable to acquire a diseased flock of poultry through negotiation, it shall have the authority to condemn the diseased flock and dispose of it to prevent the spread of disease.

(c) The commission is authorized to adopt rules and regulations to prescribe the procedures for condemning a diseased poultry flock as authorized in this section if the procedures for condemnation shall provide the owner an opportunity to be heard in the matter, shall assure him or her fair compensation for the birds, and shall otherwise afford the owner full due process of law in the condemnation process.

History. Acts 1987, No. 413, § 1.

2-40-110. Canine brucellosis.

- (a)(1) If a dog tests positive for canine brucellosis, the owner shall:
 - (A) Report the test results to the Arkansas Livestock and Poultry Commission; and
 - (B) Immediately have the dog neutered, spayed, or destroyed.
- (2) If the owner is unknown, then the person having custody of the dog shall comply with this section.
- (b) A violation of this section is a Class A misdemeanor.

History. Acts 2003, No. 1771, § 1.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of assembly, Agricultural Law, 26 U. Ark. Legislation, 2003 Arkansas General As- Little Rock L. Rev. 347.

SUBCHAPTER 2 — ARKANSAS LIVESTOCK AND POULTRY COMMISSION PROGRAMS

- SECTION.
- 2-40-201. Provisions supplemental.
 - 2-40-202. Authority of commission generally.
 - 2-40-203. Power of subpoena.
 - 2-40-204. Testing and vaccination of livestock.
 - 2-40-205. Blood test training program.
 - 2-40-206. Funding of brucellosis program.

- SECTION.
- 2-40-207. Costs of on-the-farm calfhood vaccinations.
 - 2-40-208. Inspection of livestock markets.
 - 2-40-209. Quarantine — Violations.
 - 2-40-210. Control and eradication of brucellosis.

A.C.R.C. Notes. References to “this subchapter” in §§ 2-40-201 — 2-40-209 may not apply to § 2-40-210 which was enacted subsequently.

Publisher’s Notes. This subchapter may affect § 2-40-501 et seq.

Effective Dates. Acts 1985, Nos. 150 and 151, § 10: Feb. 19, 1985. Emergency clause provided: “It is hereby found and determined by the General Assembly that the Livestock and Poultry Commission is without legislative authority to properly carry out its charge to control, suppress and eradicate livestock and poultry diseases and pests and supervise livestock and poultry sanitary work in this state; that this act is designed to clarify and expand the authority of the commission in the area of disease and should be given effect immediately in order that epidemics of disease in livestock and poultry may be avoided. Therefore, an emergency is

hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1989 (1st Ex. Sess.), No. 192, § 32: July 1, 1989. Emergency clause provided: “It is hereby found and determined by the Seventy-Seventh General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1989 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1989 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby

declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1989.”

Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: “It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of

1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor [sic], it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

2-40-201. Provisions supplemental.

The provisions of this subchapter shall be supplemental and in addition to the present laws relating to the Arkansas Livestock and Poultry Commission and the disease and pest control and eradication activities of the commission. The provisions of this subchapter shall repeal only those portions of present law that are in direct conflict with the provisions of this subchapter and those which would otherwise limit or restrict the authority granted the commission in this subchapter to alter or revise its livestock and poultry disease and pest control and eradication activities through administrative rules and regulations.

History. Acts 1985, No. 150, § 8; 1985, No. 151, § 8; A.S.A. 1947, § 78-479n.

2-40-202. Authority of commission generally.

(a) The Arkansas Livestock and Poultry Commission, by appropriately adopted administrative rules and regulations, is authorized to modify or adjust its disease or pest control and eradication activities and responsibilities so as to make them more effective or conform more closely to federal and state disease or pest control and eradication programs, as they relate to any and all contagious, communicable, or infectious diseases or pests.

(b) The commission may make such modifications or adjustments in disease and pest control and eradication activities and programs as it deems necessary or appropriate to enable it to carry out its responsibilities with respect to such activities and programs.

History. Acts 1985, No. 150, § 1; 1985, No. 151, § 1; A.S.A. 1947, § 78-475.

2-40-203. Power of subpoena.

(a)(1) The Arkansas Livestock and Poultry Commission shall have the power and authority, by majority vote of the commission, to issue subpoenas and subpoenas duces tecum to obtain health records of livestock and other evidence and information to enable it to effectively administer and enforce its rules, regulations, and laws relating to sanitation standards and disease and pest control and eradication programs.

(2) Livestock market operators and poultry dealers, packers, and producers shall, upon request, furnish the commission, or its representatives, all records of livestock and poultry produced, sold, processed, or otherwise handled by such persons. Such persons and records shall be subject to subpoena by the commission.

(b) The commission shall not have authority to issue subpoenas and subpoenas duces tecum to obtain poultry health records and other evidence and information regarding poultry.

(c) Poultry dealers, packers, and producers shall not be required to furnish records of poultry produced, sold, processed, or otherwise handled unless and until the commission shall have first issued a proclamation declaring there to be eminent danger of the existence in the state or transmission into the state of avian influenza or other exotic poultry diseases.

History. Acts 1985, No. 150, § 1; 1985, No. 151, § 1; A.S.A. 1947, § 78-475.

2-40-204. Testing and vaccination of livestock.

(a)(1) The Arkansas Livestock and Poultry Commission shall have the authority, by administrative rule or regulation, to prescribe the method and manner for testing and vaccination of livestock at livestock markets or other places within the state.

(2) This authority is not to interfere with farmer vaccination of his or her own product.

(b) The commission shall have the power to contract for services as needed for disease control.

History. Acts 1985, No. 150, § 1; 1985, No. 151, § 1; A.S.A. 1947, § 78-475.

2-40-205. Blood test training program.

(a) No person shall perform any program or certifying blood tests on livestock or poultry unless the person has first completed a blood test training program designed and conducted by the State Veterinarian and has obtained a tester's permit from the State Veterinarian.

(b) These technicians shall be used at the market, where economically feasible, except when in violation of state or federal law or regulation.

History. Acts 1985, No. 150, § 3; 1985, No. 151, § 3; A.S.A. 1947, § 78-477.

2-40-206. Funding of brucellosis program.

(a)(1) In order to fund or partially fund the brucellosis control and eradication program, there is hereby levied until July 1, 1990, a fee of one dollar (\$1.00) per head on all cattle sold in this state; after which the Arkansas Livestock and Poultry Commission shall establish the amount of the fee it feels necessary to continue the brucellosis program.

(2) The fee shall not be assessed on the resale of any cattle within ten (10) calendar days after the prior sale if the fee was paid on the prior sale.

(b)(1) The fee shall be collected by the purchaser and remitted monthly to the Director of the Department of Finance and Administration, except that if the sale occurs through a livestock auction market or any other agent of the seller, the livestock auction market or other agent shall collect and remit the fee. The director may promulgate such rules and regulations as it deems necessary to implement the collection of the fee.

(2)(A) After deducting three percent (3%) for credit to the Constitutional Officers Fund and the State Central Services Fund the remainder of funds so remitted to the director shall be deposited in the State Treasury as special revenues and credited to the Livestock and Poultry Commission Disease and Pest Control Fund.

(B) Before the close of each fiscal year, the Chief Fiscal Officer of the State shall determine the amount of funds which will remain at the end of the fiscal year in the Livestock and Poultry Commission Disease and Pest Control Fund from fees collected under the provisions of this section. He or she shall allow such funds to be carried forward and made available for the same purposes in the next succeeding fiscal year.

History. Acts 1985, No. 150, § 1; 1985, No. 151, § 1; A.S.A. 1947, § 78-475; Acts 1989 (1st Ex. Sess.), No. 192, § 26.

2-40-207. Costs of on-the-farm calfhooed vaccinations.

The costs of on-the-farm calfhooed vaccination performed by the Arkansas Livestock and Poultry Commission shall be paid from state or federal funds. Nothing herein shall be construed to prohibit a livestock owner from contracting with and compensating a veterinarian for vaccinating his or her livestock. Veterinarians shall not charge both the livestock owner and the state or federal government for the same calfhooed vaccination.

History. Acts 1985, No. 150, § 7; 1985, No. 151, § 7; A.S.A. 1947, § 78-479; Acts 1989 (1st Ex. Sess.), No. 192, § 27.

2-40-208. Inspection of livestock markets.

(a)(1) The Arkansas Livestock and Poultry Commission shall prescribe minimum sanitary and health standards for livestock markets in the state to promote and protect the health of livestock handled at these markets and the health of personnel working in the markets.

(2) The commission or its agents shall periodically inspect the markets for compliance with the sanitary and health standards.

(b)(1) If the commission or its agents find that any market is not in compliance with such standards, it shall notify the operator of the market, in writing, of areas in which the market is out of compliance.

(2) The market operator shall, within fifteen (15) days after receipt of the notice, certify to the commission the steps it has taken to comply with the standards.

(c)(1)(A) If the operator fails to respond or if the commission or its agents determine that the market has not complied with the health and sanitation standards, the market shall be inspected by a committee consisting of:

(i) One (1) livestock market representative;

(ii) Two (2) livestock producers; and

(iii) The State Veterinarian.

(B) Members of the committee shall be appointed by the chair of the commission, and these members shall be from outside the livestock market's trade area.

(2) If the committee finds that the market does not meet the prescribed sanitary standards, the commission shall order the market closed immediately until the market is found to be in compliance with the health and sanitation standards.

(3) Members of the commission may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq.

History. Acts 1985, No. 150, § 2; 1985, No. 151, § 2; A.S.A. 1947, § 78-476; Acts 1997, No. 250, § 9; 2007, No. 827, § 7.

Amendments. The 2007 amendment substituted "shall" for "is authorized and directed to" in (a)(1).

2-40-209. Quarantine — Violations.

(a) The Arkansas Livestock and Poultry Commission is authorized to adopt appropriate rules and regulations regarding the isolation or quarantine of infected, exposed, or suspected infected livestock or poultry.

(b) Any person or entity who violates the quarantine rules and regulations lawfully promulgated by the commission pursuant to its statutory authority shall, upon conviction be guilty of a Class A misdemeanor.

History. Acts 1985, No. 150, § 4; 1985, No. 151, § 4; A.S.A. 1947, § 78-478.

2-40-210. Control and eradication of brucellosis.

(a)(1) Any bovine herd infected with or directly exposed to brucellosis shall be depopulated at the discretion of and subject to the rules and regulations of the Arkansas Livestock and Poultry Commission.

(2) The herd or herds shall be identified and destroyed within thirty (30) days of written order to the owner or owners.

(3)(A) The owners will be notified by delivery of the order or by certified mail.

(B) One (1) extension of thirty (30) days, if presented in writing to the commission, will be considered in extenuating circumstances.

(b) The commission shall adopt appropriate rules and regulations concerning depopulation, negotiation, and hearing procedures.

(c)(1) The State Veterinarian or his or her designated representative will negotiate with the owner through the use of available federal and state funds to depopulate brucellosis-infected or exposed bovine herds.

(2) If the State Veterinarian and the herd owner are unable to arrive at an agreement to depopulate infected or exposed bovine herds, the commission, on advice of the State Veterinarian and in public meeting, is authorized to issue a written order to depopulate a herd and to provide indemnification to the herd owner at the current established per-head rate, with such indemnification to be paid from federal and state funds available therefor.

(3)(A) Should the herd owner desire, the commission will hear testimony by the owner and any witnesses he or she desires to present arguments as to why the herd or herds should not be depopulated.

(B) Following the hearing, the commission shall determine whether to affirm or repeal its order to depopulate.

(d) Any person or entity who violates the provisions of this section shall upon conviction be guilty of a Class A misdemeanor.

History. Acts 1995, No. 128, §§ 1-5; subchapter" in §§ 2-40-201 — 2-40-209
1995 No. 140, §§ 1-5. may not apply to this section which was

A.C.R.C. Notes. References to "this enacted subsequently.

SUBCHAPTER 3 — DEAD ANIMALS GENERALLY**SECTION.****2-40-301. Penalty.****2-40-302. Cremation.****SECTION.****2-40-303. Civil action.**

Effective Dates. Acts 1917, No. 173,
§ 6: effective on passage. Emergency de-
clared. Approved Mar. 6, 1917.

Acts 1925, No. 224, § 6: effective on
passage.

2-40-301. Penalty.

- (a) Any person, company, or corporation in any county of this state failing to do its duty provided in this subchapter or violating any provision of this subchapter shall be guilty of a violation.
- (b) Upon conviction, the offender shall be fined in any sum of not less than ten dollars (\$10.00) nor more than fifty dollars (\$50.00).

History. Acts 1917, No. 173, § 3, p. 947; C. & M. Dig., § 367; Acts 1925, No. 224, § 3; Pope's Dig., § 392; A.S.A. 1947, § 78-417; Acts 2005, No. 1994, § 24.

Amendments. The 2005 amendment substituted "violation" for "misdemeanor."

2-40-302. Cremation.

- (a) When any horse, jenny, cow, sheep, goat, hog, dog, or other animal shall die from disease, accident, or other cause in the State of Arkansas, it shall be the duty of the person owning or having possession thereof or exercising control over it to immediately cremate the animal.
- (b) This section shall not apply to any animal killed or slaughtered for food or commercial purposes.

History. Acts 1917, No. 173, §§ 1-3, p. 947; C. & M. Dig., §§ 365-367; Acts 1925, No. 224, § 3; Pope's Dig., §§ 390-392; A.S.A. 1947, §§ 78-415 — 78-417.

CASE NOTES

Negligence. A railroad company is, in burning carcasses on its own right-of-way, responsible for all results occasioned by burning them in a negligent manner so as to constitute a nuisance. *Yates v. Missouri P.R.R.*, 168 Ark. 170, 269 S.W. 353 (1925).

2-40-303. Civil action.

- (a) Any citizen of any county of this state in which the carcass of an animal may be found is empowered to bring action in the name of the State of Arkansas against the owner of the animal so neglected after death.
- (b) No bond for cost shall be required of the citizen bringing the action.

History. Acts 1917, No. 173, § 4, p. 947; C. & M. Dig., § 368; Acts 1925, No. 224, § 4; Pope's Dig., § 393; A.S.A. 1947, § 78-418.

SUBCHAPTER 4 — DISPOSAL OF FOWL CARCASSES

SECTION.	SECTION.
2-40-401. Definitions.	2-40-405. Regulations.
2-40-402. Penalty.	2-40-406. Arkansas Department of Environmental Quality — Jurisdiction unimpaired.
2-40-403. Requirements.	
2-40-404. Specifications.	

Effective Dates. Acts 1985, No. 168, § 6: Oct. 1, 1985.

Acts 1989 (3rd Ex. Sess.), No. 20, § 6: Nov. 6, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that the Livestock and Poultry Commission should have authority to regulate the methods and procedures for the disposal of fowl carcasses; that this Act will grant such authority to the Commission; and that this Act should go into effect immediately in order to provide needed flexibility to the law as soon as possible. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the pres-

ervation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1993, Nos. 241 and 250, § 7: Feb. 26, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly that eliminating the use of disposal pits is essential for effectively and efficiently protecting the health and well being of the public. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

RESEARCH REFERENCES

Ark. L. Rev. Noble and Looney, The Emerging Legal Framework for Animal

Agricultural Waste Management in Arkansas, 47 Ark. L. Rev. 159.

2-40-401. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Approved incineration" means a method of incineration approved by the commission;

(2) "Commission" means the Arkansas Livestock and Poultry Commission created by § 2-33-101;

(3) "Fowl" shall include all domesticated avian species;

(4) "Fowl carcasses" means carcasses of fowl which died as the result of sickness, suffocation, accident, or from any cause other than intentional slaughter; and

(5) "Responsible person" means the person who has the direct responsibility for the day-to-day care of the fowl involved.

History. Acts 1985, No. 168, § 1; A.S.A. 1947, § 78-415.1; Acts 1993, No. 241, § 1; 1993, No. 250, § 1.

2-40-402. Penalty.

Each violation of this subchapter by a responsible person shall constitute a Class A misdemeanor and shall be punishable as provided in the Arkansas Criminal Code.

History. Acts 1985, No. 168, § 5; A.S.A. 1977, § 78-415.5.

Cross References. Arkansas Criminal Code, § 5-1-101 et seq.

2-40-403. Requirements.

The Arkansas Livestock and Poultry Commission shall, by regulation, specify acceptable methods for the disposal of fowl carcasses, including, but not limited to:

- (1) Composting of carcasses;
- (2) Cremation or incineration;
- (3) Extrusion;
- (4) On-farm freezing;
- (5) Rendering; and
- (6) Cooking for swine feed.

History. Acts 1985, No. 168, § 2; A.S.A. Sess.), No. 20, § 1; 1993, No. 241, § 2; 1947, § 78-415.2; Acts 1989 (3rd Ex. 1993, No. 250, § 2.

2-40-404. Specifications.

The Arkansas Livestock and Poultry Commission shall, by regulation, specify acceptable methods of the disposal of fowl carcasses in the event of a major die-off.

History. Acts 1985, No. 168, § 3; A.S.A. Sess.), No. 20, § 2; 1993, No. 241, § 3; 1947, § 78-415.3; Acts 1989 (3rd Ex. 1993, No. 250, § 3.

2-40-405. Regulations.

The Arkansas Livestock and Poultry Commission shall promulgate regulations necessary to implement this subchapter.

History. Acts 1985, No. 168, § 4; A.S.A. 1947, § 78-415.4.

2-40-406. Arkansas Department of Environmental Quality — Jurisdiction unimpaired.

No provision of this subchapter shall be interpreted as denying or preempting the regulatory or enforcement jurisdiction of the Arkansas Department of Environmental Quality.

History. Acts 1989 (3rd Ex. Sess.), No. 20, § 3; 1999, No. 1164, § 1.

SUBCHAPTER 5 — BRUCELLOSIS VACCINATION

SECTION.	SECTION.
2-40-501. Penalty.	2-40-505. Enforcement.
2-40-502. Vaccination required.	2-40-506. Cooperative agreements.
2-40-503. Standards for vaccine.	2-40-507. Indemnities.
2-40-504. Refusal to vaccinate.	2-40-508. Legislative intent.

A.C.R.C. Notes. References to "this subchapter" in §§ 2-40-501 — 2-40-507 may not apply to § 2-40-508 which was enacted subsequently.

Effective Dates. Acts 1981, No. 770, § 27: July 1, 1981. Emergency clause provided: "It is hereby found and determined by the Seventy-Third General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this act on July 1, 1981 is essential to the operation of the agency for which the appropriations of this act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this act beyond July 1, 1981 could work irreparable harm upon the proper administration and providing of essential governmental programs. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1981."

Acts 1985, Nos. 150 and 151, § 10: Feb. 19, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly that the Livestock and Poultry commission is without legislative authority to properly carry out its charge to control, suppress and eradicate livestock and poultry diseases and pests and

supervise livestock and poultry sanitary work in this state; that this act is designed to clarify and expand the authority of the commission in the area of disease and should be given effect immediately in order that epidemics of disease in livestock and poultry may be avoided. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1993, No. 1174, § 27: July 1, 1993. Emergency clause provided: "It is hereby found and determined by the Seventy-Ninth General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1993 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1993 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1993."

2-40-501. Penalty.

Any violation of the provisions of this subchapter shall be a Class A misdemeanor.

History. Acts 1981, No. 271, § 10; A.S.A. 1947, § 78-470.

Cross References. Misdemeanors, § 5-1-107.

2-40-502. Vaccination required.

(a) Beginning July 1, 1981, and to the extent that funds are made available, all female calves between the ages of four (4) months and twelve (12) months shall be vaccinated for brucellosis by an official or authorized agent of the Arkansas Livestock and Poultry Commission or by a duly authorized veterinarian or agent of the United States Department of Agriculture.

(b)(1) All female bovines between the ages of four (4) months and twelve (12) months, which have not been vaccinated for brucellosis as

provided in this section and which are sold through Arkansas cattle markets or concentration points for movement to Arkansas farms, shall be vaccinated in accordance with this subchapter before being moved from the market.

(2) Every female bovine which is twelve (12) months of age or older, that is not calfhooed vaccinated or spayed between the ages of four (4) months and twelve (12) months and is sold through any livestock market in the state or otherwise sold by one (1) person to another in the state, which heifer is not from a certified brucellosis-free herd, shall meet such permanent identification and restriction requirements as may be prescribed by administrative rules and regulations duly adopted by the commission. This requirement will be reviewed by the commission and is subject to amendment or suspension upon achievement of a class free brucellosis status.

(c) Each calf vaccinated pursuant to this subchapter shall be identified in accordance with the Brucellosis Uniform Methods and Rules of the United States Department of Agriculture.

History. Acts 1981, No. 271, §§ 1-3, 11; A.S.A. 1947, §§ 78-461 — 78-463; Acts 1985, No. 150, § 6; 1985, No. 151, § 6; 1995, No. 19, § 1; 1995, No. 142, § 1.

2-40-503. Standards for vaccine.

All vaccine used under the provisions of this subchapter shall:

(1) Be furnished or procured by the Arkansas Livestock and Poultry Commission from laboratories approved by the United States Department of Agriculture;

(2) Conform to standards of viability and potency; and

(3) Be so handled to assure effective results.

History. Acts 1981, No. 271, § 7; A.S.A. 1947, § 78-467.

2-40-504. Refusal to vaccinate.

(a) It shall be unlawful for any person, firm, corporation, or association to refuse to submit calves required to be vaccinated and identified under this subchapter for vaccination, to remove official marks required by it, or to simulate official marks.

(b) If any person, firm, corporation, or association shall refuse to submit calves required to be vaccinated and identified under this subchapter, the Arkansas Livestock and Poultry Commission may incur such expenses as are necessary to properly vaccinate and identify the calves. These expenses shall be borne by the owner of the calves.

History. Acts 1981, No. 271, § 4; A.S.A. 1947, § 78-464.

2-40-505. Enforcement.

(a)(1) In order to carry out the provisions of this subchapter, any duly authorized representative of the Arkansas Livestock and Poultry Commission or United States Department of Agriculture may enter upon any premises except dwelling houses at a time agreeable to the commission and to the owner of the premises.

(2) No person shall interfere with a representative while enforcing the provisions of this subchapter.

(b) The commission may use the services of official veterinarians or agents or employ the services of other veterinarians or agents to carry out the provisions of this subchapter.

(c) In order to carry into effect the provisions of this subchapter, the commission may adopt such rules and regulations and require such reports and records as may be necessary.

History. Acts 1981, No. 271, §§ 5, 8, 9;
A.S.A. 1947, §§ 78-465, 78-468, 78-469.

2-40-506. Cooperative agreements.

The Arkansas Livestock and Poultry Commission may enter into cooperative agreements with the United States Department of Agriculture for the control and eradication of brucellosis as provided for in this subchapter.

History. Acts 1981, No. 271, § 6; A.S.A.
1947, § 78-466.

2-40-507. Indemnities.

The Arkansas Livestock and Poultry Commission is authorized to pay brucellosis indemnities in accordance and compliance with current rules and regulations of the United States Department of Agriculture.

History. Acts 1981, No. 770, § 23;
A.S.A. 1947, § 78-461.1.

2-40-508. Legislative intent.

It is further the intent of the General Assembly that the employees of the Livestock and Poultry Commission will continue to vaccinate heifers on the farm and at the sale barns for brucellosis and will carry out all the practices of the commission which have brought the state to its current near brucellosis-free status.

History. Acts 1993, No. 1174, § 19.

A.C.R.C. Notes. References to "this chapter" in subchapters 1-12 may not apply to this section which was enacted subsequently.

References to "this subchapter" in §§ 2-40-501 — 2-40-507 may not apply to this section which was enacted subsequently.

SUBCHAPTER 6 — BRUCELLOSIS CONTROL AREAS

SECTION.

2-40-601. Petition.

2-40-602. Certification.

SECTION.

2-40-603. Administration.

CASE NOTES**Constitutionality.**

Statutes and regulations allowing testing of cattle for brucellosis are not violative of due process. *Burt v. Arkansas Livestock & Poultry Comm'n*, 278 Ark. 236, 644 S.W.2d 587 (1983).

The statutes and the regulations governing brucellosis testing were constitutional as applied to a situation where all cattle in a county were ordered to be tested and cattle owner did not demonstrate that his or her classification was different from that of any other owner in test area. *Burt v. Arkansas Livestock & Poultry Comm'n*, 278 Ark. 236, 644 S.W.2d 587 (1983).

Under federal schedule of payment for cattle required to be disposed of because of brucellosis, treating all beef cattle owners alike was valid even though they were not treated the same as all dairy cattle owners

since dairy and beef herds are clearly kept for different purposes. This distinction was properly within the bounds of the equal protection provisions of the United States and Arkansas Constitutions. *Burt v. Arkansas Livestock & Poultry Comm'n*, 278 Ark. 236, 644 S.W.2d 587 (1983).

Since owner of diseased cattle would receive the regular slaughter price plus a scheduled amount from the United States Department of Agriculture, there was no taking of property under this section other than the cost of rounding up the herds for testing and possible injury of some cattle. Even if there was a reduction in value caused by the taking of property pursuant to the exercise of valid police powers, there was no absolute right to indemnity for the reduction. *Burt v. Arkansas Livestock & Poultry Comm'n*, 278 Ark. 236, 644 S.W.2d 587 (1983).

2-40-601. Petition.

Whenever seventy-five percent (75%) of the cattlemen or owners of seventy-five percent (75%) of the cattle in any county in this state, as reflected on the records of the county assessor, shall petition the Arkansas Livestock and Poultry Commission to have the county made a modified certified brucellosis-free area, the commission may declare the county a brucellosis control area.

History. Acts 1957, No. 33, § 1; A.S.A. 1947, § 78-433.

2-40-602. Certification.

(a)(1) Whenever the Arkansas Livestock and Poultry Commission shall declare a county in this state to be a brucellosis control area, the commission shall proceed to conduct such tests and enforce such reasonable rules and regulations as may be necessary to qualify the county for certification or recertification as a modified certified brucel-

losis-free county, as outlined in the uniform rules and regulations of the United States Department of Agriculture.

(2) A county may be certified as a brucellosis-free area when not more than one percent (1%) of cattle and not more than five percent (5%) of cattle herds are positive to the official agglutination test.

(b) Whenever seventy-five percent (75%) or more of the counties of this state have been certified by the commission as brucellosis-free areas, all other counties not so certified shall automatically become brucellosis control areas.

History. Acts 1957, No. 33, § 2; 1959, No. 124, § 1; A.S.A. 1947, § 78-434.

2-40-603. Administration.

In order to carry into effect the provisions of this subchapter, the Arkansas Livestock and Poultry Commission may make such rules and regulations and require such reports and records as may be necessary.

History. Acts 1957, No. 33, § 3; A.S.A. 1947, § 78-435.

SUBCHAPTER 7 — HOG CHOLERA

SECTION.

2-40-701. Hog cholera virus defined.

2-40-702. Penalties.

2-40-703. Administration.

2-40-704. Duty to report.

SECTION.

2-40-705. Investigation.

2-40-706. Quarantine.

2-40-707. Disposition of swine.

2-40-708. Sanitation.

Effective Dates. Acts 1957, No. 154, § 4: July 1, 1957.

2-40-701. Hog cholera virus defined.

“Hog cholera virus” means an unattenuated virus administered to swine for the purpose of immunizing swine from the disease known as hog cholera.

History. Acts 1957, No. 154, § 1; A.S.A. 1947, § 78-605.

2-40-702. Penalties.

(a) Any person violating a provision of this subchapter shall be guilty of a violation and upon conviction shall be fined not less than ten dollars (\$10.00) nor more than one hundred dollars (\$100).

(b)(1) It shall be unlawful for any person, firm, corporation, or association to have in possession or to keep, sell, offer for sale, barter,

exchange, give away, or otherwise dispose of hog cholera virus in this state, except at the University of Arkansas or another state-supported institution of higher learning and under the supervision of a licensed veterinarian and with a special written permit issued by the Arkansas Livestock and Poultry Commission.

(2) Any person, firm, corporation, or association violating any provision of this subsection shall be guilty of a violation and upon conviction shall be fined not less than twenty-five dollars (\$25.00) nor more than five hundred dollars (\$500).

History. Acts 1957, No. 154, §§ 1, 2; 1963, No. 248, § 8; A.S.A. 1947, §§ 78-448, 78-605, 78-606; Acts 2005, No. 1994, § 25.

Amendments. The 2005 amendment substituted "violation" for "misdemeanor" in (a) and (b)(2).

2-40-703. Administration.

Rules and regulations to accomplish the intent and purposes of this subchapter shall be made by the Arkansas Livestock and Poultry Commission.

History. Acts 1963, No. 248, § 7; A.S.A. 1947, § 78-447.

2-40-704. Duty to report.

All persons having knowledge of or suspicion of the existence of hog cholera shall immediately report it to the Arkansas Livestock and Poultry Commission or an authorized representative of the commission or report it to the county agent or vocational agriculture instructor or local veterinarian, who shall report it to the commission.

History. Acts 1963, No. 248, § 1; A.S.A. 1947, § 78-441.

2-40-705. Investigation.

All reported or suspected cases of hog cholera shall be investigated by a representative of the Arkansas Livestock and Poultry Commission, a veterinarian of the Agricultural Research Service, or an accredited veterinarian to confirm the diagnosis.

History. Acts 1963, No. 248, § 2; A.S.A. 1947, § 78-442.

2-40-706. Quarantine.

All herds known or suspected to be infected with or exposed to hog cholera shall be examined, and no swine may be moved into or from the premises except upon written permission of the representative of the Arkansas Livestock and Poultry Commission. If, after proper diagnosis

by a representative named in § 2-40-705, cholera is not found, the quarantine will be removed.

History. Acts 1963, No. 248, § 3; A.S.A. 1947, § 78-443.

2-40-707. Disposition of swine.

(a) Carcasses of swine which have died from hog cholera shall be disposed of by the owner by burning, burial, or rendering under the supervision of a representative of the Arkansas Livestock and Poultry Commission.

(b) Healthy swine, although exposed to cholera, may be removed to slaughtering establishments under permit and supervision of the commission.

History. Acts 1963, No. 248, § 4; A.S.A. 1947, § 78-444.

2-40-708. Sanitation.

(a) All premises, vehicles, and equipment infected with hog cholera shall be cleaned and disinfected under the direct supervision of a representative of the Arkansas Livestock and Poultry Commission.

(b) All stockyards or auction markets shall be maintained in a reasonably sanitary condition. When a diseased condition exists, markets must clean and disinfect in accordance with federal regulations under supervision or direction of an attending veterinarian or a representative of the commission.

History. Acts 1963, No. 248, §§ 5, 6; A.S.A. 1947, §§ 78-445, 78-446.

SUBCHAPTER 8 — EQUINE INFECTIOUS ANEMIA

SECTION.

- 2-40-801. Definitions.
- 2-40-802. Penalties and fines.
- 2-40-803. Rules, regulations, and orders.
- 2-40-804. Testing requirements for domiciled equidae.
- 2-40-805. Equidae identification requirements.
- 2-40-806. Authority to require test.
- 2-40-807. Personnel authorized to collect blood samples.
- 2-40-808. Submission of sample and test charts.
- 2-40-809. Requirements for Arkansas-approved equine infectious anemia testing laboratories.
- 2-40-810. Classification of equidae tested.

SECTION.

- 2-40-811. Reporting of test results.
- 2-40-812. Quarantines.
- 2-40-813. Quarantining reactors.
- 2-40-814. Positive reactors at official racetracks.
- 2-40-815. Testing requirements in affected herds.
- 2-40-816. Movement of reactors and exposed animals.
- 2-40-817. Requirements for quarantined holding facilities.
- 2-40-818. Fictitious names and erroneous information.
- 2-40-819. Testing requirements for change of ownership.
- 2-40-820. Movement of equidae through approved market.

SECTION.

- 2-40-821. Requirements of equidae participating in equine activities.
- 2-40-822. General requirements for equidae entering Arkansas.
- 2-40-823. Requirements of equidae moving within the state.
- 2-40-824. Entry requirements to a veterinarian's clinic for care or treatment.

SECTION.

- 2-40-825. Entry requirements to an approved slaughter facility.
- 2-40-826. Equine infectious anemia services.
- 2-40-827. [Repealed.]
- 2-40-828. Reports of violations.
- 2-40-829. Research facility certification required.

Publisher's Notes. An earlier version of former subchapter 8, concerning equine infectious anemia, was reenacted by Acts 1987, No. 1007. However, the former subchapter, as reenacted, is deemed to be superseded by this subchapter. The former subchapter was derived from the following sources:

2-40-801. Acts 1975 (Extended Sess., 1976), No. 1212, § 1; A.S.A. 1947, § 78-455; Acts 1987, No. 1007, § 1.

2-40-802. Acts 1975 (Extended Sess., 1976), No. 1212, § 6; A.S.A. 1947, § 78-460; Acts 1987, No. 1007, § 6.

2-40-803. Acts 1975 (Extended Sess., 1976), No. 1212, § 2; A.S.A. 1947, § 78-456; Acts 1987, No. 1007, § 2.

2-40-804. Acts 1975 (Extended Sess., 1976), No. 1212, § 4; A.S.A. 1947, § 78-458; Acts 1987, No. 1007, § 4.

2-40-805. Acts 1975 (Extended Sess., 1976), No. 1212, §§ 3, 5; A.S.A. 1947, §§ 78-457, 78-459; Acts 1987, No. 1007, §§ 3, 5.

Former subchapter 8, concerning equine infectious anemia, was repealed by Acts 1997, No. 1306, § 31. The subchapter was derived from the following sources:

2-40-801. Acts 1987, No. 374, § 1.

2-40-802. Acts 1987, No. 374, § 4; 1987, No. 1034, § 2; 1991, No. 1155, § 1.

2-40-803. Acts 1987, No. 374, § 2; 1987, No. 1034, § 1; 1991, No. 1155, § 2.

2-40-804. Acts 1987, No. 374, § 3.

2-40-805. Acts 1991, No. 1155, § 3.

Cross References. Transfer of funds

from Livestock and Poultry Equine Infectious Anemia Control Fund to Livestock and Poultry Fund Account, § 2-33-116.

Effective Dates. Acts 1999, No. 10, § 7: Feb. 2, 1999. Emergency clause provided: "It is hereby determined by the General Assembly that horse racing and activities related thereto in Arkansas have a significant favorable impact on the economy of the entire state and the welfare of our citizens and residents, and it is imperative that the provisions of this act be effective to the fullest extent possible with respect to the upcoming racing season scheduled to begin January 29, 1999 in order to maintain and improve Arkansas' premier and traditional position in horse racing, and in order to accomplish these goals (essential to the welfare of the state and its citizens and residents) the amendments and provisions set forth in this act must be effective immediately. Therefore, an emergency is hereby declared to exist, and this act, being immediately necessary for the preservation of the public peace, health and safety, shall take effect, and be in full force, immediately from and after its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

CASE NOTES

Constitutionality.

This subchapter is a valid exercise of police power. *Winters v. State*, 301 Ark.

127, 782 S.W.2d 566 (1990) (decision under prior law).

2-40-801. Definitions.

As used in this subchapter:

(1) "Accredited veterinarian" means a veterinarian licensed by the Veterinary Medical Examining Board and approved by the Animal and Plant Health Inspection Service of the United States Department of Agriculture (USDA, APHIS) to perform functions required for state or cooperative state and federal animal disease control and eradication programs;

(2) "Adjacent herds" means a group or groups of equidae sharing common pasture or having other direct contact with an affected herd or reactor animal and herds containing previous purchases from or exchanges with an affected herd. Herds separated by a distance of less than four hundred forty (440) yards are considered adjacent herds;

(3) "Affected herd" means a herd of equidae that contains or has contained one or more animals infected with equine infectious anemia and that has not passed the required tests necessary for release from quarantine;

(4) "Approved laboratory" means a laboratory which is approved by the United States Department of Agriculture and the State Veterinarian to conduct an official test for equine infectious anemia;

(5) "Approved market" means a stockyard, livestock market, or other premises, approved by the commission where equidae are congregated for sale;

(6) "Authorized agent" means a person who has been authorized by the Arkansas Livestock and Poultry Commission to act on its behalf in making investigations and inspections and performing other services or acts which have been defined by this subchapter;

(7) "Certificate of veterinary inspection" means an official document issued by an accredited veterinarian at the point of origin of a shipment of equidae. It shall include:

(A) The name, breed, registration number if any, implanted electronic identification transponder number if any, tattoo if any, brand if any, sex, age, color, and markings sufficient to positively identify each equidae listed on the form;

(B) A record of a physical examination of each animal verifying freedom from visible evidence of any contagious, infectious, or communicable diseases and the results of an official test for equine infectious anemia, including the name of the approved laboratory, the case number, and the date of the most recent test results; and

(C) The equidae temperature reading;

(8) "Certified equine infectious anemia verifier" or "certified EIA verifier" means any certificate holder having completed the prescribed

training course co-sponsored by the Arkansas Livestock and Poultry Commission, the University of Arkansas Cooperative Extension Service, and the Arkansas Horse Council, Inc.;

(9) "Commission" means the Arkansas Livestock and Poultry Commission;

(10) "Concentration point" means the gathering of one (1) or more equidae, for any purpose, at a single location, facility, or area whereby equidae will be within four hundred forty (440) yards from each other;

(11) "Designated epidemiologist" means an experienced licensed epidemiologist who has been designated by the State Veterinarian to perform those functions necessary for the classification of equidae, based on the evaluation of test results and consideration of the animal and herd history as well as other epidemiologic factors including, but not limited to, weather conditions, number of vectors in the area, and concentration of animals;

(12) "Epidemiologist investigation" means the process used by the designated epidemiologist to classify equidae;

(13) "Equidae" means a family of perissodactyl ungulate mammals containing a single genus *equus*, which includes horses, asses, jacks, jennies, hennies, mules, donkeys, burros, ponies, and zebras;

(14) "Equine activity" means:

(A) Equine shows, fairs, competitions, performances, or parades that involve any or all breeds of equines and any of the equine disciplines, including, but not limited to, dressage, hunter and jumper horse shows, grand prix jumping, three-day events, combined training, rodeos, pulling, cutting, polo, steeplechasing, endurance trail riding and western games, and hunting;

(B) Equine training and teaching activities;

(C) Boarding equines;

(D) Riding, inspecting, or evaluating an equine belonging to another, whether or not the owner has received some monetary consideration or other thing of value for the use of the equine or is permitting a prospective purchaser of equine to ride, inspect, or evaluate the equine; and

(E) Rides, hunts, or other equine activities of any type, no matter how informal or impromptu;

(15) "Equine infectious anemia", "EIA", or "EIAV" means the communicable infectious disease which affects equidae and is caused by the virus of equine infectious anemia;

(16) "Exposed equidae" means equidae that have been in contact with, associated with, adjacent to, or within four hundred forty (440) yards of animals known to be equine infectious anemia reactors;

(17) "Herd" means one (1) or more equidae of single or multiple ownership maintained on common ground or one (1) or more equidae under single or multiple ownership that are geographically separated but that can have an interchange or movement without regard to health status;

(18)(A) "Livestock dealer" means any person engaged in the business of buying or selling livestock including equidae in commerce on a

commission basis, or any person registered and bonded under the provisions of the federal Packers and Stockyards Act, as amended, who buys or sells equidae.

(B) The term "livestock dealer" does not include a farmer or rancher who buys or sells livestock or equidae in the ordinary course of his or her farming or ranching operation;

(19) "Neighboring herd" means one (1) or more equidae residing within four hundred forty (440) yards of another premise containing equidae and which other premise is owned, leased, or caretaken by different individuals, partnerships, or corporations. Temporary additions of equidae, regardless of length of time, are considered part of neighboring herds;

(20) "Negative current equine infectious anemia test" or "negative current EIA test" means a negative response to an official equine infectious anemia test conducted by an approved laboratory within the past twelve (12) months;

(21) "Official equine infectious anemia test" or "official EIA test" means the agar gel immunodiffusion (AGID) test, also known as the "Coggins" test, the competitive enzyme-linked immunosorbent assay (CELISA) test, the synthetic antigen enzyme linked immunosorbent assay (SA-ELISA) test and any other United States Department of Agriculture licensed tests approved by the commission;

(22) "Participant" means any person, whether amateur or professional, who engages in an equine activity, whether or not a fee is paid to participate in the equine activity;

(23)(A) "Permit" or "permit for movement" means an official document issued by the commission, a representative of Office of Veterinary Services of the Animal and Plant Health Inspection Service of the United States Department of Agriculture, or an accredited veterinarian authorizing the movement of a reactor or exposed equidae to a quarantined holding facility, an approved slaughter facility, or approved quarantined premise.

(B) The permit shall list the name, breed, registration number if any, tattoo if any, implanted electronic identification transponder number if any, brand if any, sex, age, color, and markings sufficient to positively identify each equidae listed on the form. The owner's name and address, origin and destination locations, and purpose of the movement shall also be recorded;

(24) "Quarantine" means a written notice or order issued by the commission showing the boundaries of the area or premise affected, the equidae restricted, and the restrictions, if any;

(25) "Quarantined holding facility" means a quarantined premise approved by the commission to handle reactors or exposed equidae;

(26) "Reactor" means any equidae which reacts positively to an official equine infectious anemia test;

(27) "Regulatory veterinarian" means a veterinarian employed by or acting as an agent for the commission; and

(28) "Research facility" means any facility that meets or exceeds the standards and requirements set forth by the Animal and Plant Health

Inspection Service of the United States Department of Agriculture and the commission for equine infectious anemia research.

History. Acts 1997, No. 1306, § 1; 2001, No. 540, § 1. is probably a reference to the Packers and Stockyards Act, 1921, codified as 7 U.S.C. § 181 et seq.

U.S. Code. The federal Packers and Stockyards Act referred to in this section

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of assembly, Agricultural Law, 24 U. Ark. Legislation, 2001 Arkansas General As- Little Rock L. Rev. 403.

2-40-802. Penalties and fines.

Any person, firm, or corporation who violates any provision of this subchapter shall, upon conviction, be guilty of a Class A misdemeanor and shall be ordered by the court to comply within seven (7) calendar days with all provisions of this subchapter and all regulations promulgated under this subchapter, or be guilty of contempt of court.

History. Acts 1997, No. 1306, § 24; 2001, No. 540, § 2.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of assembly, Agricultural Law, 24 U. Ark. Legislation, 2001 Arkansas General As- Little Rock L. Rev. 403.

2-40-803. Rules, regulations, and orders.

(a) The Arkansas Livestock and Poultry Commission may promulgate, modify, and enforce the rules, regulations, and orders not inconsistent with law as it shall from time to time deem necessary to effectively carry out the provisions of this subchapter.

(b) Except as otherwise provided in this subchapter, upon conviction any person or entity that violates a provision of this subchapter or a commission rule or regulation promulgated pursuant to this subchapter is guilty of a Class A misdemeanor.

History. Acts 1997, No. 1306, § 25; 2007, No. 827, § 8.

Amendments. The 2007 amendment, in (b), inserted "upon conviction" and "rule

or," substituted "provision of this subchapter or" for "provision of this subchapter and," and made stylistic changes.

2-40-804. Testing requirements for domiciled equidae.

(a)(1) All equidae domiciled within the State of Arkansas shall be subjected to an official equine infectious anemia test every twelve (12) months.

(2) An equidae is domiciled within the state when the equidae has been pastured, stabled, housed, or kept in any fashion in the state more than thirty (30) consecutive or unconsecutive days.

(3) Written proof of a negative current official equine infectious anemia test shall be made available in the form of negative results from an approved laboratory upon request made by an authorized representative of the Arkansas Livestock and Poultry Commission or the owner, lessee, or caretaker of a neighboring herd.

(b)(1) Owners of horses domiciled within the state shall be responsible for maintaining a negative current official equine infectious anemia test on all horses that they own.

(2) After January 1, 1998, failure to furnish proof of negative current official equine infectious anemia test to an authorized agent of the commission may result in quarantine and penalties prescribed by §§ 2-40-826 and 2-40-827 [repealed].

(3) An owner of a neighboring herd, whether of single or multiple ownership, shall have the right to know if any equine within four hundred forty (440) yards are untested, exposed, or reactor animals.

(c)(1) When any equidae is examined or treated by an accredited veterinarian, the owner or caretaker must present to the veterinarian written proof of a negative current official equine infectious anemia test.

(2) If no official equine infectious anemia test results are available, the accredited veterinarian may draw an official sample for equine infectious anemia as part of the examination or treatment, at the owner's expense.

History. Acts 1997, No. 1306, § 2.

2-40-805. Equidae identification requirements.

All equidae domiciled within Arkansas and over the age of six (6) months or weaned from a mare shall be positively identified on the official equine infectious anemia test form by an accredited veterinarian or an agent of the Arkansas Livestock and Poultry Commission by means of distinctive markings, color patterns, previous brand, previous tattoo, previously implanted electronic transponder number, permanent scars, other blemishes, cowlicks, whorls, lip tattoo, hot brand or freeze brand prior to an equine infectious anemia test.

History. Acts 1997, No. 1306, § 3.

2-40-806. Authority to require test.

Any equidae which have been within four hundred forty (440) yards of a reactor shall be subject to testing by the Arkansas Livestock and Poultry Commission, the State Veterinarian, or their agents if the exposure to the reactor occurred no more than thirty (30) days prior to the testing of the reactor.

History. Acts 1997, No. 1306, § 4.

2-40-807. Personnel authorized to collect blood samples.

All samples collected from equidae for equine infectious anemia testing shall be collected by an accredited veterinarian, the State Veterinarian, or other Arkansas Livestock and Poultry Commission-authorized personnel.

History. Acts 1997, No. 1306, § 5.

2-40-808. Submission of sample and test charts.

(a) All blood samples submitted for official equine infectious anemia tests must be accompanied by a properly completed VS Form 10-11 (Equine Infectious Anemia Laboratory Test Form) or other form prescribed by the Arkansas Livestock and Poultry Commission.

(b) Photocopies of the form shall not be considered an official record of the test.

History. Acts 1997, No. 1306, § 6.

2-40-809. Requirements for Arkansas-approved equine infectious anemia testing laboratories.

No person, firm, or corporation shall initiate operation of an equine infectious anemia testing laboratory without first obtaining approval from the Arkansas Livestock and Poultry Commission.

History. Acts 1997, No. 1306, § 7.

2-40-810. Classification of equidae tested.

(a) All equidae tested shall be classified as either negative or reactor.

(b) Reactors may be retested at the owner's expense provided the owner or the owner's agent initiates a retest request to the State Veterinarian not more than five (5) working days after the receipt of the test results by the owner or the owner's agent.

(c)(1) All retest samples shall be collected by the same accredited veterinarian who conducted the original test or an alternate accredited veterinarian appointed by the State Veterinarian, and submitted to an approved laboratory within twenty (20) days after the receipt by the owner or the owner's agent of the first positive test.

(2) The veterinarian collecting the retest sample shall be provided documentation that the animal being retested is the one shown positive on the initial test.

(d)(1) All reactors shall be held in isolation, under quarantine, while awaiting the retest results.

(2) All other equidae on the premises shall be held under quarantine while awaiting the retest results.

(e) Retest results shall be the official results unless there are conflicting tests.

(f) If there are conflicting tests, a third test shall be conducted in the presence of an authorized agent of the commission or by an authorized agent of the commission.

(g) The sample will be sent to the commission's diagnostic laboratory. Costs will be borne by the state unless an accredited veterinarian draws the sample, which will be paid for by the owner.

(h) Results of two (2) out of three (3) tests will determine classification.

History. Acts 1997, No. 1306, § 8.

2-40-811. Reporting of test results.

(a) It is the responsibility of the approved laboratory to notify the State Veterinarian's office and the individual submitting the sample for testing within twenty-four (24) hours after classifying an equidae as a reactor.

(b) It is the responsibility of the individual collecting the test sample to notify the reactor's owner or the owner's agent of the results of all positive tests within forty-eight (48) hours after classification and to notify the animal's owner or the owner's agent of the quarantine resulting from positive test results.

History. Acts 1997, No. 1306, § 9.

2-40-812. Quarantines.

(a)(1) All reactors shall be quarantined by an authorized agent of the commission to the premises of origin or other premises designated by the owner and approved by the Arkansas Livestock and Poultry Commission.

(2) The quarantine shall restrict the reactors, all other equidae on the premises, and all equidae epidemiologically determined by the commission to have been exposed to a reactor.

(3) All equidae on affected premises shall be isolated at least four hundred forty (440) yards away from all equidae on adjacent premises and at least four hundred forty (440) yards from any public road.

(4) It is the responsibility of the owner of reactors to maintain those animals in isolation at least four hundred forty (440) yards away from any public road and all other equidae.

(5) The quarantine may be released by an authorized agent of the commission after all quarantined equidae in the affected herd test negative to an official equine infectious anemia test not less than sixty (60) days nor more than eighty (80) days following the identification and removal of the last reactor, or as determined by the designated epidemiologist.

(b) No equidae held under quarantine may be moved or released until a written permit or quarantine release, signed by an authorized agent, has been executed.

(c) All adjacent herds, neighboring herds, and other exposed equine, so deemed by epidemiological investigation, will be quarantined by written report by an authorized agent.

(d) A deviation in testing requirements for a quarantine is acceptable when made by the designated epidemiologist.

History. Acts 1997, No. 1306, § 10.

2-40-813. Quarantining reactors.

(a)(1)(A) With the exception of the equine stabled at a racetrack regulated by the Arkansas Racing Commission, all reactors shall be quarantined to the owner's premises or an approved quarantine holding facility and shall be destroyed or sold for immediate slaughter or permitted to a research facility within twenty (20) days after the date of the last official positive equine infectious anemia test.

(B) If the equidae is destroyed or dies of natural causes within the twenty-day period, verification of the destruction or death by written and signed statement from an accredited veterinarian or an authorized agent of the commission must be furnished to the office of the State Veterinarian.

(C) If sold for slaughter, the equidae may be moved from the owner's premises to an approved market or to an approved slaughter facility, provided that the equidae are accompanied by a permit for movement.

(2) The owner or trainer of reactors stabled at a racetrack regulated by the commission shall be notified immediately by the testing veterinarian, racetrack officials, or by commission personnel and the reactors shall be removed from the racetrack premises immediately.

(b)(1)(A) Upon request by the owner, any female reactor that is at least two hundred seventy (270) days pregnant or has a nursing foal less than four (4) months of age, as verified by an accredited veterinarian or an agent of the commission, at her side may be quarantined to the owner's premises and shall be kept at least four hundred forty (440) yards away from any other equidae.

(B) The reactor shall be identified with a "71A" brand, or other brand prescribed by the commission, at least two (2) inches in height on the left shoulder or left side of the neck.

(C) The female reactor may remain in quarantine until her foal dies or reaches an age of four (4) months, at which time the reactor shall either be destroyed, shipped by permit to an approved quarantined holding facility, or sold for immediate slaughter within twenty (20) days.

(D) If the equidae is destroyed or dies from natural causes, verification of destruction by a written and signed statement must be furnished to the office of the State Veterinarian by an accredited veterinarian or an agent of the commission.

(E) If sold for slaughter, the reactor may be moved from the owner's premises to an approved market or to an approved slaughter

facility provided that the reactor is accompanied by a permit for movement.

(2) Any foal kept in quarantine with its equine infectious anemia positive dam shall be officially tested for equine infectious anemia at the owner's expense not less than sixty (60) days nor more than eighty (80) days after it is weaned. Foals nursing positive mares must be weaned at four (4) months of age.

(3)(A) Any equidae which tested positive to the official equine infectious anemia test prior to August 1, 1997, shall be quarantined to the owner's premises and kept at least four hundred forty (440) yards away from any other equidae or public road.

(B) The reactor shall be identified with a "71A" brand, or other brand prescribed by the commission, at least two (2) inches in height on the left shoulder or left side of neck.

(C) If the reactor is sold, it must be sold for slaughter and a VS Form 1-27 or permit must be issued by commission personnel to move the reactor from the owner's premises to slaughter.

(D) Ownership of reactors may not be changed except for slaughter.

(E) If the reactor is destroyed or dies, verification of destruction or death by written and signed statement must be furnished to the office of the State Veterinarian, certified by an accredited veterinarian, or an agent of the commission.

(4) Any reactor found in violation of quarantine shall be ordered sold for slaughter or destroyed within twenty (20) days, and the owner or caretaker will be subject to prosecution for noncompliance.

History. Acts 1997, No. 1306, § 11.

CASE NOTES

Permits.

Defendant lacked standing to challenge the vagueness of subdivision (a)(1)(A) of this section, requiring owners to permit their horses to a research facility if the

animal tested positive for equine infectious anemia, where defendant never attempted to "permit" her infected horse. *Ross v. State*, 347 Ark. 334, 64 S.W.3d 272 (2002).

2-40-814. Positive reactors at official racetracks.

(a) All equines stabled at a racetrack regulated by the Arkansas Racing Commission which test positive to the official equine infectious anemia test shall be immediately removed from the racetrack, shall be quarantined to the premises to which they are moved, and shall be destroyed, branded by authorized commission personnel, sold for immediate slaughter, or by permit shipped to an approved quarantined holding facility within twenty (20) days after the date of the last official positive equine infectious anemia test.

(b) If the equine is destroyed or dies of natural causes within the twenty (20) days, a written and signed statement by an accredited

veterinarian or an agent of the commission must be furnished to the office of the State Veterinarian.

(c) If the equine is sold for slaughter, the equine may be moved from the owner's premises to an approved market or to an approved slaughter facility provided that the equine is accompanied by a permit for movement.

History. Acts 1997, No. 1306, § 12.

2-40-815. Testing requirements in affected herds.

(a) All equidae determined to have been on the same premises as a reactor at the time the reactor was bled shall be tested by an accredited veterinarian or an authorized agent of the Arkansas Livestock and Poultry Commission at the owner's expense sixty (60) to eighty (80) days after the reactor's last positive test result.

(b) A foal less than four (4) months of age nursing a negative tested dam is exempt from testing.

History. Acts 1997, No. 1306, § 13.

2-40-816. Movement of reactors and exposed animals.

(a) All reactors and exposed equidae must be accompanied by a permit for movement when moved from their quarantined premises.

(b) All reactors must be branded prior to moving interstate.

(c) Movement of a reactor and exposed equidae must be direct to an approved slaughter facility or a quarantined holding facility for movement to an approved slaughter facility.

(d)(1) Any other move such as a change in location of a reactor or exposed equidae to an alternate quarantined premise must be approved in advance following an epidemiological investigation by the State Veterinarian or other designated Arkansas Livestock and Poultry Commission personnel.

(2) The movement must also be accompanied by a permit for movement.

(e) If a change in destination becomes necessary, a new permit must be issued by commission-authorized personnel or the regulatory veterinarian.

History. Acts 1997, No. 1306, § 14.

2-40-817. Requirements for quarantined holding facilities.

(a)(1) Any person desiring to operate a quarantined holding facility must file an application for approval of the facility on forms provided by the Arkansas Livestock and Poultry Commission.

(2) The facility must have an area where equidae testing positive to an official equine infectious anemia test and exposed equidae are kept,

and where the equidae are isolated and confined at least four hundred forty (440) yards from all other equidae at all times.

(3) The facility must be approved by the commission pursuant to an inspection of the premises prior to the issuance of the license.

(b) Failure to maintain the reactors and exposed equidae in confinement and isolation at least four hundred forty (440) yards from all other equidae at all times is a violation of this subchapter.

(c)(1) All equidae held in a quarantined holding facility must be shipped directly to an approved slaughter facility without diversion.

(2) An animal moved from a quarantined holding facility may not go through any livestock auction facility prior to shipment to slaughter.

(3) All movements from a quarantined holding facility must be accompanied by a permit for movement.

(d) All equidae entering or within an approved quarantine holding facility shall be branded or show evidence of an "S" brand on the top of the left hip or a "71A" brand or other brand prescribed by the commission on the left shoulder or neck, not less than two (2) inches in height.

(e) No equidae may be held over twenty (20) days.

(f) A quarantine pen must be clearly identified by a sign or paint using the word "Quarantined" on all sides. Letters of the sign must be a minimum of one (1) foot in height.

(g) Failure to comply with this subchapter shall be cause for cancellation of approval by the commission.

History. Acts 1997, No. 1306, § 15.

2-40-818. Fictitious names and erroneous information.

(a) Test charts, permits, and other official forms must be completed in the name of the owner or the person responsible for the equidae.

(b) No livestock auction facility operator or veterinarian may be held responsible for recording erroneous information provided by an owner, buyer, or seller.

(c) The individual providing the erroneous or fictitious information shall be deemed to have violated this subchapter.

History. Acts 1997, No. 1306, § 16.

2-40-819. Testing requirements for change of ownership.

(a)(1)(A) All equidae which are sold, bartered, traded, given free of charge, or offered for sale, or any horses otherwise exchanged for any reason within Arkansas except at approved markets must be accompanied by a record of a negative equine infectious anemia test conducted at an approved laboratory within the previous six (6) months.

(B) Photocopies of a VS Form 10-11 or other form prescribed by the Arkansas Livestock and Poultry Commission shall not be considered an official record of the test.

(C) A foal less than six (6) months of age is exempt from the testing requirements if the foal is accompanied by, nursing, and included in change of ownership with a negative tested mare.

(D) A foal sold separately is required to have a negative current official equine infectious anemia test.

(2) On all private sales, trades, or barter, that is, any sale other than through an approved market, both the buyer and seller are equally and individually responsible for meeting the equine infectious anemia testing requirements prior to the sale or change of ownership.

(b) Notwithstanding the provisions of subsection (a) of this section, with respect to a horse claimed in a claiming race run at a licensed racetrack regulated by the Arkansas Racing Commission, the Arkansas Livestock and Poultry Commission may require:

(1) The negative equine infectious anemia test to have been conducted at an approved laboratory within the previous twelve (12) months, rather than the previous six (6) months;

(2) Any negative equine infectious anemia test required to be conducted within the last six (6) months to be conducted after the race and after title and risk of loss have passed to the buyer; or

(3) That the requirements of both subdivisions (b)(1) and (2) of this section be met.

History. Acts 1997, No. 1306, § 17; added (b)(3), and made related and stylistic changes.
1999, No. 10, § 3; 2007, No. 827, § 9.

Amendments. The 2007 amendment

2-40-820. Movement of equidae through approved market.

(a) All equidae offered for sale or sold at approved markets must:

(1) Be accompanied by written proof of a negative equine infectious anemia test conducted within the last six (6) months;

(2) Have a blood sample collected by an accredited veterinarian or an authorized agent of the Arkansas Livestock and Poultry Commission at the market and test negative to an official equine infectious anemia test performed by an approved laboratory before the animal leaves the market;

(3) Have a blood sample collected by an accredited veterinarian or an authorized agent of the commission at the market and be quarantined to the market until negative results are received from an approved laboratory;

(4) Be "S" branded and consigned to slaughter before receiving test results; or

(5) Be allowed to return to their premises of origin prior to unloading and prior to consignment and be quarantined to the premises of origin until tested negative. The equidae must be tested within thirty (30) days.

(b) A photocopy of a VS Form 10-11 or other form prescribed by the commission shall not be considered an official record of test.

(c) A foal less than six (6) months of age sold with and nursing a negative-tested mare is exempt from the testing requirements of this subchapter.

(d)(1) A known reactor or known exposed equidae shall not be consigned for sale at an approved market unless permitted by authorized commission personnel.

(2) An animal which is found to be a reactor or exposed through testing conducted at an approved market must be maintained in a quarantine pen and isolated from all other equidae in the sale facility.

(3)(A) The quarantine pen must be clearly identified by sign or paint using the word "Quarantined" on all sides.

(B) Letters must be one foot (1') high.

(e) It is the market owner's responsibility to make sure that all equines sold meet these requirements.

History. Acts 1997, No. 1306, § 18.

2-40-821. Requirements of equidae participating in equine activities.

(a) All equidae moving within the state to equidae exhibitions, including, but not limited to, fairs, livestock shows, breed association shows, rodeos, trail rides, parades, team pennings, team ropings, racetracks, or other equidae concentration points shall be accompanied by a record of a negative current official equine infectious anemia test within the past twelve (12) months.

(b) A photocopy of a VS Form 10-11 or other form prescribed by the commission shall not be accepted as an official record of the test.

(c) Any individual, club, organization, or association conducting an equine activity shall arrange for a certified equine infectious anemia verifier to be present at the event to verify that each of the equidae is accompanied by a record of a negative current official equine infectious anemia test if:

(1) The event charges a fee of any kind, including an entry fee, a gate fee, a membership fee, a registration fee, a user fee, a camping fee, or a grounds fee;

(2) The event provides prize money, trophies, plaques, ribbons, points, or awards of any kind, including jackpot and benefits; or

(3) The event causes a concentration of more than fifty (50) equidae.

(d) Any show or event within the state may require any additional tests or additional requirements deemed necessary.

History. Acts 1997, No. 1306, § 19;
2001, No. 540, § 3.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of assembly, Agricultural Law, 24 U. Ark. Legislation, 2001 Arkansas General As- Little Rock L. Rev. 403.

2-40-822. General requirements for equidae entering Arkansas.

(a) All equidae entering Arkansas must be accompanied by a record of a negative current official equine infectious anemia test.

(b) All equidae must also be accompanied by a certificate of veterinary inspection, listing information from a record of a negative official equine infectious anemia test, the name and address of the consignor and consignee, the number of animals in the shipment, and a description which accurately identifies each animal.

(c) A foal under six (6) months old accompanied by a negative dam does not have to be tested for equine infectious anemia.

History. Acts 1997, No. 1306, § 20.

2-40-823. Requirements of equidae moving within the state.

All equidae moving within the state for any reason shall be accompanied by a negative current official equine infectious anemia test.

History. Acts 1997, No. 1306, § 21.

2-40-824. Entry requirements to a veterinarian's clinic for care or treatment.

(a) Equidae may enter Arkansas when consigned directly to a veterinary hospital or clinic for treatment or for usual veterinary procedures when accompanied by an owner or shipper permit.

(b) Following release by the veterinarian, equidae must be returned immediately to the state of origin by the most direct route or meet testing requirements for additional movements.

History. Acts 1997, No. 1306, § 22.

2-40-825. Entry requirements to an approved slaughter facility.

(a) All equidae consigned to an approved slaughter facility must be properly and individually identified and accompanied by a waybill, bill of lading, permit, or certificate of veterinary inspection.

(b) A known reactor must be branded, and a known exposed animal must be properly identified and accompanied by a permit.

History. Acts 1997, No. 1306, § 23.

2-40-826. Equine infectious anemia services.

(a) In order to fund or partially fund the Equine Infectious Anemia Control and Eradication Program, the Arkansas Livestock and Poultry Commission may, by appropriately adopted administrative rules and regulations, design and maintain a fee structure for the purpose of defraying the cost of services performed.

(b) The fees collected shall be deposited in the State Treasury as special revenues and shall be credited to the Livestock and Poultry

Equine Infectious Anemia Control Fund created on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State.

History. Acts 1997, No. 1306, § 26.

2-40-827. [Repealed.]

Publisher's Notes. This section, concerning the expiration of subchapter, was repealed by Acts 1999, No. 759, § 1. The

section was derived from Acts 1997, No. 1306, § 27.

2-40-828. Reports of violations.

Any citizen may report to the Arkansas Livestock and Poultry Commission an equidae that the citizen has reason to believe has not been tested as required by this subchapter.

History. Acts 1999, No. 759, § 2.

2-40-829. Research facility certification required.

Any research facility in this state which contains equidae infected with equine infectious anemia or any reactor equidae shall be certified by the Arkansas Livestock and Poultry Commission and shall be so maintained as to prevent the infection of any other equidae, whether at or outside the research facility.

History. Acts 2001, No. 540, § 4.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of assembly, Agricultural Law, 24 U. Ark. Legislation, 2001 Arkansas General As- Little Rock L. Rev. 403.

SUBCHAPTER 9 — TICK CONTROL PROGRAM

SECTION.

2-40-901. Purpose.

2-40-902. Cost sharing.

2-40-903. Administration.

SECTION.

2-40-904. Arsenical dip.

2-40-905. Dipping vats.

2-40-906. Stock range rider.

2-40-901. Purpose.

(a) Tick infestations are becoming increasingly severe and are affecting unrelated segments of our economy such as tourism. It is in the best interest of the people of the state to secure a more effective regulatory mechanism to address this concern.

(b) The purpose of this subchapter is to establish an effective and equitable procedure by which the state can assist its agricultural interests in controlling the tick infestation problem.

History. Acts 1973, No. 306, § 1; A.S.A. 1947, § 78-452.

2-40-902. Cost sharing.

Under this subchapter, control will be effected by the provision of a cost-sharing program, through which the state will offset the cost to the livestock owner of purchasing the insecticide used in treating his or her livestock for the tick infestation problem.

History. Acts 1973, No. 306, § 1; A.S.A. 1947, § 78-452.

2-40-903. Administration.

(a)(1) The Arkansas Livestock and Poultry Commission shall establish rules and regulations as needed to fulfill the purpose of this subchapter.

(2) These rules and regulations shall include, but not be limited to:

(A) Establishing criteria covering eligibility to the program, such as a brucellosis-free herd;

(B) Maintaining a list of approved vendors of suitable insecticides;

(C) Determining the most expeditious method of reimbursing the insecticide vendors;

(D) Setting the amount, on a fixed dollars-per-gallon basis, which the state will provide in order to adequately and equitably support this program; and

(E) Setting penalties for those acting in violation of the purpose of this subchapter.

(b) The county agricultural extension service may assist in receiving and processing all applications for insecticide under the program, according to the rules and regulations laid down by the commission.

History. Acts 1973, No. 306, §§ 2, 3; A.S.A. 1947, §§ 78-453, 78-454.

2-40-904. Arsenical dip.

(a)(1) The Arkansas Livestock and Poultry Commission, working in cooperation with the University of Arkansas Cooperative Extension Service, is authorized to provide arsenical dip for the charging of vats, in which to dip cattle for the purpose of reducing ticks in the State of Arkansas, to any county in the State of Arkansas when, in the judgment of the State Veterinarian, dipping is necessary.

(2) Counties desiring dipping shall establish dipping vats within the respective counties at locations to be designated by the county court, acting in conjunction with the State Veterinarian.

(b) No arsenical dip is to be furnished by the commission for the charging of any dipping vat unless the vat and its adjacent drain pens have a cover which, in the judgment of the State Veterinarian or his or

her agent, is sufficient to prevent dilution of the dipping solution by rain.

(c) Counties which establish vats under the provisions of this subchapter shall have preference in any dipping program hereinafter carried out by the commission or the State Veterinarian.

History. Acts 1951, No. 396, § 1; A.S.A. 1947, § 78-419.

2-40-905. Dipping vats.

(a)(1) The establishment of vats for the dipping of cattle shall be done by the county court.

(2) The maintenance of the vats and the dipping of cattle shall be under the supervision of the county judge.

(b) Dipping shall be carried out once each month between May 1 and November 1 of each year.

History. Acts 1951, No. 396, § 2; A.S.A. 1947, § 78-420.

CASE NOTES

Authority of Officers.

Where owner refused to dip cow as ordered, officers could take cow, have her dipped, and then hold her until fees for

dipping were paid. *Humphreys v. Tinsley*, 181 Ark. 71, 25 S.W.2d 1 (1930) (decision under prior law).

2-40-906. Stock range rider.

(a) The county judge in each county establishing vats shall designate and appoint some qualified person to be known as a stock range rider to act during the dipping season and conduct the dipping operations in his or her county according to such rules and regulations as may be promulgated by the State Veterinarian or the Arkansas Livestock and Poultry Commission.

(b)(1) The stock range rider shall receive as his or her compensation the sum of two hundred dollars (\$200) per month from May 1 to November 1, to be paid by the county.

(2) The quorum court of the county shall make an appropriation to pay the salary and the expenses of establishing the vats provided for in this subchapter.

History. Acts 1951, No. 396, §§ 2, 3; A.S.A. 1947, §§ 78-420, 78-421.

SUBCHAPTER 10 — CATTLE QUARANTINE LINES

SECTION.

2-40-1001. Penalty for stock crossing lines.

SECTION.

2-40-1002. Federal quarantine line.
2-40-1003. District quarantine line.

SECTION.

2-40-1004. Penalties for cattle drifting or being transported across district line.

SECTION.

2-40-1005. Enforcement of district quarantine.

2-40-1006. Requirements for railroads.

Effective Dates. Acts 1895, No. 120, § 5: effective on passage.

Acts 1899, No. 45, § 7: effective on passage.

Acts 1901, No. 13, § 2: effective on passage.

Acts 1901, No. 59, § 2: effective on passage.

Acts 1907, No. 104, § 2: effective on passage.

Acts 1909, No. 255, § 2: effective on passage.

2-40-1001. Penalty for stock crossing lines.

(a) Any owner of stock who shall allow his or her stock to drift across a quarantine line that has been established by law shall be guilty of a Class C misdemeanor.

(b) This section shall apply only to a resident owning cattle and living on land adjoining a quarantine line or within five (5) miles of a quarantine line and shall not apply to a dealer or a dealer's agent who is driving cattle out of a quarantine territory.

History. Acts 1925, No. 95, § 1; Pope's Dig., § 383; A.S.A. 1947, § 78-507; Acts 2005, No. 1994, § 404.

Amendments. The 2005 amendment,

in (a), inserted "or her" and "Class C" and deleted "and subject to arrest and fine of from one dollar (\$1.00) to twenty-five dollars (\$25.00)."

2-40-1002. Federal quarantine line.

(a)(1) It shall be unlawful for any person or corporation to drive or transport any cattle from south to north across the cattle quarantine line within the State of Arkansas as it may be fixed by the proper authorities of the United States.

(2) This section shall not apply to a person or corporation driving or transporting cattle across the quarantine line as infected cattle or as cattle from an infected district or to a person driving any cattle across the line during the time it is not prohibited by the authorities of the United States.

(b)(1) Any person or corporation that shall violate a provision of this section, being either the owner of the cattle, the carrier, or the driver for hire, or otherwise, shall be guilty of a violation.

(2) Upon conviction, an offender shall be fined in any sum not less than fifty dollars (\$50.00) nor more than two hundred dollars (\$200).

(c)(1) Any citizen of this state shall have the power, and it shall be the duty of all peace officers of the respective counties of this state, to stop any cattle driven or transported or being driven or transported across the quarantine line from south to north and impound and drive or transport the cattle back south of the quarantine line.

(2) All costs and expenses incurred by a citizen or peace officer in impounding or driving the cattle back south of the quarantine line shall be taxed as costs against the person or corporation convicted of the unlawful driving of the cattle across the quarantine line in violation of this section.

(d) A court of competent jurisdiction in any county north of the quarantine line through which or into which cattle shall be driven shall have cognizance of a violation of a provision of this section.

History. Acts 1895, No. 120, §§ 1-4, p. 176; C. & M. Dig., §§ 384-387; Pope's Dig., §§ 408-411; A.S.A. 1947, §§ 78-501 — 78-504; Acts 2005, No. 1994, § 26.

Amendments. The 2005 amendment substituted "violation" for "misdemeanor" in (b)(1).

2-40-1003. District quarantine line.

(a) There shall be established by the State of Arkansas a district cattle quarantine line described as follows: Beginning at the northwest corner of Benton County and running south along the west boundary line of the state to the southwest corner of Washington County; thence in an easterly direction following the southern boundary lines of Washington, Madison, Newton, and Searcy Counties to the northwest corner of Van Buren County, thence south following the line between Van Buren and Pope Counties to the southwest corner of Van Buren County; thence in an easterly direction following the southern boundary line of Van Buren and Cleburne Counties to the southeast corner of Cleburne County; thence in a northerly direction following the line between Cleburne and White Counties to the southwest corner of Independence County; thence east twelve (12) miles following the south line of Independence County to the Jackson County line; thence south six (6) miles to the southwest corner of Jackson County; thence in an easterly direction to the southeast corner of Jackson County; thence in a northerly direction following the east line of Jackson County to the Lawrence County line; thence east along the south line of Lawrence County, to the southeast corner thereof; thence north along the east line of Lawrence County to the southern line of Greene County; thence along the southern line of Greene County to the Missouri line.

(b) If, at any time, it shall be found after investigation by the Arkansas Livestock and Poultry Commission that the district cattle quarantine line established by this section should be changed so as to further include or exclude one (1) or more counties or parts of counties, and the recommendation is approved by the commission, it shall be submitted to the Governor, who shall, by proclamation, make the change. The quarantine line thus established shall, from that date, replace the district cattle quarantine line of this section.

(c) All cattle above the district cattle quarantine line of subsection (a) of this section or of the line modified by subsection (b) of this section bearing boophilus annulatus ticks shall be considered as affected with a contagious disease.

(d) This section shall not interfere with the shipment of cattle by cars which are being transported across the state to other markets or places of destination outside of the state or territory included in the quarantine district.

History. Acts 1899, No. 45, §§ 1, 2, p. 71; 1901, No. 13, § 1, p. 26; 1901, No. 59, § 1, p. 106; 1907, No. 104, § 1, p. 266; 1907, No. 409, §§ 10, 15, p. 1043; 1909, No. 255, § 1, p. 762; C. & M. Dig., §§ 357, 362, 378, 379; Pope's Dig., §§ 382, 387,

402, 403; A.S.A. 1947, §§ 78-408, 78-505, 78-506, 78-510.

Cross References. Powers and duties of Arkansas Livestock and Poultry Commission generally, § 2-33-107.

State Veterinarian, § 2-33-105.

2-40-1004. Penalties for cattle drifting or being transported across district line.

(a)(1) Cattle from below the district cattle quarantine line shall not be allowed to drift across the quarantine line, and the owner of the cattle allowing them to so drift across shall be guilty of a violation.

(2)(A) Upon conviction, the owner shall be fined in any sum of not less than two hundred dollars (\$200) nor more than five hundred dollars (\$500).

(B) This penalty shall not apply to an adjoining landowner as described in § 2-40-1001.

(3) Cattle from above the quarantine line that drift across the quarantine line shall be subject to the laws affecting other cattle below the quarantine line.

(b)(1) At no season of the year shall cattle be driven or transported across the district quarantine line without a certificate of inspection by a federal or state veterinary inspector.

(2) Any person so driving or transporting cattle or any person found aiding or abetting in the driving or transporting of cattle shall be guilty of a violation and upon conviction shall be fined in any sum of not less than two hundred dollars (\$200) nor more than five hundred dollars (\$500) for each offense.

History. Acts 1899, No. 45, § 3, p. 71; 1907, No. 409, § 11, p. 1043; C. & M. Dig., §§ 358, 380; Pope's Dig., §§ 383, 404; A.S.A. 1947, §§ 78-508, 78-509; Acts 2005, No. 1994, § 27.

this section is vested in the Arkansas Livestock and Poultry Commission. See § 2-33-107.

Amendments. The 2005 amendment substituted "violation" for "misdemeanor" in (a)(1) and (b)(2).

Publisher's Notes. Administration of

CASE NOTES

Evidence.

Evidence sustained finding that accused drove cattle from an infected county

across the quarantine line. *Housley v. State*, 166 Ark. 453, 266 S.W. 957 (1924).

2-40-1005. Enforcement of district quarantine.

(a)(1) It shall be the duty of any peace officer of this state who apprehends any person violating this subchapter to have the party arrested and brought before the proper authorities for a speedy trial.

(2) In the prosecution of offenders under this subchapter by a peace officer, they shall not be required to give bond for costs.

(b) Any officer finding any cattle which have been driven across the line in violation of this subchapter shall, upon such finding, seize and impound the cattle and hold them as security against all fines and costs of prosecution of the owner of the cattle for the violating of this subchapter.

(c)(1) It shall be the duty of any officer, upon finding the cattle, as soon as costs of prosecution, fine, etc., are settled, to drive the cattle back across the quarantine line as near the route over which they came as possible.

(2)(A) The officer shall be allowed the sum of five dollars (\$5.00) per day for such labor.

(B) The sum shall be paid by the parties violating this subchapter.

History. Acts 1899, No. 45, §§ 4-6, p. §§ 405-407; A.S.A. 1947, §§ 78-514 — 78-71; C. & M. Dig., §§ 381-383; Pope's Dig., 516.

2-40-1006. Requirements for railroads.

(a)(1) It shall be unlawful for any railroad company carrying cattle from other states or territories below the quarantine line established by the United States Department of Agriculture, or from below the district cattle quarantine line in this state, to unload cattle at any point in Arkansas above the district cattle quarantine line, except at such points as may be designated by the Arkansas Livestock and Poultry Commission and under such restrictions as are prescribed by the United States Department of Agriculture.

(2) Pursuant to § 2-40-1003(d), cattle may be transported over the district cattle quarantine line and unloaded when accompanied by a certificate of inspection by a federal or state veterinary inspector.

(b) It shall be unlawful for any railway company to throw out from any car, which since last cleansing has contained cattle from below the district cattle quarantine line of this state or from below the quarantine line established by the United States Department of Agriculture in other states or territories, the excreta, litter, or other refuse, at any point in Arkansas north of the quarantine line, except under such restrictions as are prescribed by the United States Department of Agriculture.

(c) Railroad companies in Arkansas shall fence all their rights-of-way above the district cattle quarantine line established by § 2-40-1003(d).

History. Acts 1907, No. 409, §§ 12-14, Dig., §§ 384-386; A.S.A. 1947, §§ 78-511 p. 1043; C. & M. Dig., §§ 359-361; Pope's — 78-513.

CASE NOTES

ANALYSIS

Constitutionality.
Damages.

Constitutionality.

This section is not in conflict with any provisions of the acts of Congress upon this subject and is a valid exercise of the state's police power. It does not conflict with the paramount authority of Congress to regulate interstate commerce. *Kansas City S.R.R. v. State*, 90 Ark. 343, 119 S.W. 288 (1909).

Damages.

In an action for damages growing out of

a violation of this section, it is not necessary to charge the railroad company with knowledge that cattle brought from below the quarantine line and unloaded above it were infected or infested since, if the cattle were transported and unloaded in compliance with the quarantine law, the duty rested upon the railroad company to show compliance in justification of its conduct, but damages must be shown to have resulted from such conduct. *Saint Louis, I.M. & S.R.R. v. Campbell*, 116 Ark. 119, 172 S.W. 823 (1915).

SUBCHAPTER 11 — RABIES

SECTION.

2-40-1101. Entire county as infested area.

Cross References. Rabies control, § 20-19-301 et seq.

Vaccination, § 20-19-201 et seq.

Effective Dates. Acts 1961, No. 196, § 4: Mar. 7, 1961. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that there has been severe outbreaks of rabies in various counties of this state; that many people in such counties are unable to buy rabies vaccine; that because

thereof, many cattle are being lost in this state and many human lives are being endangered, and that only by the immediate passage of this act may this situation be corrected. Therefore, an emergency is hereby declared to exist, and this act being necessary for the preservation of the public peace, health and safety shall take effect and be in full force from and after its passage and approval."

2-40-1101. Entire county as infested area.

(a) The Arkansas Livestock and Poultry Commission is authorized, in the case of a severe outbreak of rabies in any county in this state, to declare an entire county as a rabies-infested area.

(b) Upon declaring any county as a rabies-infested area, the commission is authorized to pay up to one-half (½) the cost of the vaccine used in vaccinating cattle in the county against rabies, and shall pay the entire cost of providing vaccine for use by humans bitten or exposed to rabies-infested animals.

History. Acts 1961, No. 196, § 1; A.S.A. 1947, § 78-436.

SUBCHAPTER 12 — PSEUDORABIES CONTROL AND ERADICATION PROGRAM

SECTION.

2-40-1201. Fees — Disposition of funds.

Effective Dates. Acts 1991, No. 1105, § 31: July 1, 1991. Emergency clause provided: "It is hereby found and determined by the Seventy-Eighth General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1991 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the

event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1991 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1991."

2-40-1201. Fees — Disposition of funds.

(a) In order to fund or partially fund the pseudorabies control and eradication program there is hereby levied a fee of one dollar (\$1.00) per head on all spent sows and boars sold at livestock markets.

(b)(1) Each livestock market operator shall collect fees and remit monthly to the Director of the Department of Finance and Administration.

(2) The director may promulgate such rules and regulations as it deems necessary to implement the collection of the fee.

(c) After deducting three percent (3%) for credit to the Constitutional Officers Fund and the State Central Services Fund, the remainder of funds so remitted to the director shall be deposited in the State Treasury as special revenues and credited to the Livestock and Poultry Commission Swine Testing Fund.

(d) Before the close of each fiscal year, the Chief Fiscal Officer of the State shall determine the amount of funds which will remain at the end of the fiscal year in the Livestock and Poultry Commission Swine Testing Fund from fees collected under the provisions of this section. The Chief Fiscal Officer of the State shall allow such funds to be carried forward and made available for the same purpose in the next-succeeding fiscal year.

History. Acts 1991, No. 1105, § 24.

SUBCHAPTER 13 — DISPOSAL OF LARGE ANIMAL CARCASSES

SECTION.

2-40-1301. Definitions.

2-40-1302. Disposal.

2-40-1303. Violation.

SECTION.

2-40-1304. Regulations.

2-40-1305. Responding to complaints.

A.C.R.C. Notes. References to “this chapter” in subchapters 1-12 may not apply to this subchapter which was enacted subsequently.

RESEARCH REFERENCES

Am. Jur. 4 Am. Jur. 2d, Ani., § 23.
50 Am. Jur. 2d, Larc., § 66.
Ark. L. Rev. Noble and Looney, The Emerging Legal Framework for Animal Agricultural Waste Management in Arkansas, 47 Ark. L. Rev. 159.
C.J.S. 3A C.J.S., Animals, §§ 2, 32, 62, 80.
63 C.J.S., Mun. Corp., § 980.

2-40-1301. Definitions.

- As used in this subchapter, unless the context otherwise requires:
- (1) “Commission” means the Arkansas Livestock and Poultry Commission created by § 2-33-101;
 - (2) “Large animal” means cattle, horses, hogs, sheep, goats, cervidae, bison, llamas, alpacas, ostriches, emus, rheas, and other native or nonnative animals, excluding dogs and cats; and
 - (3) “Large animal carcasses” means carcasses of large animals which died as the result of sickness, suffocation, accident, or from any cause other than intentional slaughter.

History. Acts 1993, No. 522, § 1.

2-40-1302. Disposal.

- (a)(1) All large animal carcasses and all parts of large animal carcasses shall be disposed of in a manner prescribed by regulations of the Arkansas Livestock and Poultry Commission.
- (2) However, no large animal carcass shall be buried or otherwise disposed of in any landfill operated under a permit issued by the Arkansas Department of Environmental Quality.
- (b) If a person or entity conducts a farming activity at more than one (1) location, it shall not be necessary for such person or entity to have a disposal ditch or facility at each location unless specified by the State Veterinarian.

History. Acts 1993, No. 522, §§ 3, 4;
1999, No. 1164, § 2.

2-40-1303. Violation.

Each violation of this subchapter by a responsible person shall constitute a Class A misdemeanor and shall be punishable accordingly.

History. Acts 1993, No. 522, § 2.

2-40-1304. Regulations.

(a) The Arkansas Livestock and Poultry Commission shall promulgate regulations necessary to implement this subchapter.

(b) The commission shall, by regulation, specify:

(1) The requirements for disposal ditches and incineration;

(2) The method of burying large animal carcasses and parts thereof; and

(3) All other methods and procedures found acceptable by the commission for the disposal of large animal carcasses and parts thereof.

History. Acts 1993, No. 522, §§ 5, 7.

2-40-1305. Responding to complaints.

The Arkansas Livestock and Poultry Commission shall have the responsibility to respond to and take appropriate action concerning complaints relating to large animal carcasses.

History. Acts 1993, No. 522, § 6.

TITLE 3

ALCOHOLIC BEVERAGES

CHAPTER.

1. GENERAL PROVISIONS.
2. ADMINISTRATION AND ENFORCEMENT.
3. PROHIBITED PRACTICES.
4. ALCOHOLIC BEVERAGES GENERALLY — PERMITS.
5. BEER AND WINE — MANUFACTURE, SALE, AND TRANSPORTATION GENERALLY.
6. NATIVE BRANDY LAW.
7. EXCISE TAXES.
8. LOCAL OPTION.
9. ON-PREMISES CONSUMPTION.

CHAPTER 1

GENERAL PROVISIONS

SECTION.

- 3-1-101. Title.
3-1-102. Definitions.

SECTION.

- 3-1-103. Exempted products.

Effective Dates. Acts 1935, No. 108, Art. 10; approved Mar. 16, 1935. Emergency clause provided: "Whereas, the repeal of the Eighteenth Amendment to the Constitution of the United States has created an emergency which requires immediate control of intoxicating liquors; and
"Whereas, the present state revenue does not meet the needs for the maintenance

and development of the State Government and its agencies and the state's credit is threatened with impairment, an emergency is declared to exist and this act shall become a law and be effective on its passage and approval or nonaction by the Governor."

RESEARCH REFERENCES

Am. Jur. 45 Am. Jur. 2d, Intox. L., § 1 et seq. **C.J.S.** 48 C.J.S., Intox. L., § 2 et seq.

3-1-101. Title.

This act shall be known, and may be cited in all legal proceedings, as the "Arkansas Alcoholic Control Act".

History. Acts 1935, No. 108, Art. 1, § 8; Pope's Dig., § 14101; A.S.A. 1947, § 48-101. Art. 9, repealed all laws or parts of laws in conflict with the act, but provided that the act was not intended to repeal or conflict with the taxing provisions of Acts 1934

(2nd Ex. Sess.), Nos. 4 and 9, or Acts 1933 (1st Ex. Sess.), No. 7. Additionally, the section stated that if there was a conflict between the taxing provisions, the provisions of the acts mentioned would govern. Acts 1934 (2nd Ex. Sess.), No. 4 was superseded by § 3-5-401 et seq. Acts 1934 (2nd Ex. Sess.), No. 9 was superseded by § 3-6-101 et seq. Acts 1933 (1st Ex. Sess.), No. 7 is codified as ch. 5, subch. 2 of this title.

Meaning of "this act". Acts 1935, No. 108, codified as §§ 3-1-101 — 3-1-103, 3-2-101, 3-2-205, 3-3-101 — 3-3-103, 3-3-212, 3-3-401, 3-3-404, 3-3-405, 3-4-101 — 3-4-103, 3-4-201, 3-4-202, 3-4-207 — 3-4-211, 3-4-213, 3-4-214, 3-4-215 [repealed], 3-4-217, 3-4-219, 3-4-220, 3-4-301 — 3-4-303, 3-4-501, 3-4-503, 3-4-601 — 3-4-605, 3-8-301 — 3-8-311, 3-8-313 — 3-8-317, 23-12-708.

CASE NOTES

ANALYSIS

Construction.

Abatement of Nuisances.

Prior Legislation Retained.

Construction.

This act and Acts 1935, No. 109 (§ 3-7-101 et seq.) should be read together. *Southwestern Distilled Prods., Inc. v. State ex rel. Butt*, 203 Ark. 524, 160 S.W.2d 208 (1941).

Abatement of Nuisances.

The Alcoholic Control Act did not repeal the provisions of Acts 1915, No. 109 re-

garding abatement of nuisances. *Digiaco v. State*, 194 Ark. 24, 105 S.W.2d 78 (1937).

Prior Legislation Retained.

Acts 1935, No. 108 did not repeal in its entirety the statute regulating sale of malt and vinous beverages of more than 3.2% and not more than 5% alcoholic content (§ 3-5-201 et seq.) and prohibiting their sale to minors, nor the statute relating to abatement of liquor nuisances (§ 16-105-201 et seq.). *Digiaco v. State*, 194 Ark. 24, 105 S.W.2d 78 (1937).

Cited: *Rowell v. Austin*, 276 Ark. 445, 637 S.W.2d 531 (1982).

3-1-102. Definitions.

(a) As used in this act, unless the context otherwise requires:

(1) "Block" means the area on both sides of that portion of a street lying between intersecting streets and extending back, on both sides, halfway to the next parallel street;

(2) "Dispensary" means any store which, under the provisions of this act and having paid all taxes required by the state, sells at retail, in unbroken packages, for consumption off the premises, any intoxicating alcoholic liquor as defined by this act;

(3)(A) "Malt" means liquor brewed from the fermented juices of grain and containing more than five percent (5%) of alcohol by weight;

(B) Beer containing not more than five percent (5%) of alcohol by weight and all other malt beverages containing not more than five percent (5%) of alcohol by weight are not defined as malt liquors and are excepted from each and every provision of this act;

(4) "Manufacturer" means any person engaged in the business of distilling, brewing, making, blending, rectifying, or producing for sale in wholesale quantities alcoholic liquors of any kind including whiskey, brandy, cordials, liquors, ales, beers, or other liquids containing alcohol, except wines;

(5) "Person" means any and all corporations, partnerships, associations, or individuals;

(6) "Spirituous" means liquor distilled from the fermented juices of grain, fruits, or vegetables and containing more than twenty-one percent (21%) of alcohol by weight, or any other liquids containing more than twenty-one percent (21%) of alcohol by weight;

(7) "Vinous" means the fermented juices of fruits, except native wine, containing more than five percent (5%) and not more than twenty-one percent (21%) of alcohol by weight.

(b) All other words used in this act shall be defined according to the statutes in such case made and provided, if any, and otherwise shall be defined according to the custom and usage of the people of Arkansas.

History. Acts 1935, No. 108, Art. 1, §§ 1-3, 5-7; Pope's Dig., §§ 14094-14096, 14098-14100; A.S.A. 1947, §§ 48-102 — 48-104, 48-106 — 48-108.

Meaning of "this act". See note to § 3-1-101.

CASE NOTES

ANALYSIS

Purpose.
Alcoholic Content.
Intoxicating Liquor.

Purpose.

The intent of the Alcoholic Control Act is to classify beer having an alcoholic content of not more than 5% as a malt beverage as distinguished from malt liquor. *McKeown v. State*, 197 Ark. 454, 124 S.W.2d 19 (1939); *Scurlock v. Central Distribs., Inc.*, 223 Ark. 954, 269 S.W.2d 790 (1954).

Alcoholic Content.

Where city voted dry, the sale of beer with an alcoholic content of not more than 5% was also prohibited, notwithstanding the definitions contained in this section. *McKeown v. State*, 197 Ark. 454, 124 S.W.2d 19 (1939).

Alcoholic content of a malt beverage controls in determining whether it should be taxed, regulated, and controlled as a "spirituous, vinous, and malt liquor" under this act and Acts 1935, No. 109, or as "beer and light wines" under § 3-5-201 et

seq. *Scurlock v. Central Distribs., Inc.*, 223 Ark. 954, 269 S.W.2d 790 (1954).

In absence of statute controlling labeling or branding of alcoholic beverages or rules or regulations of Alcoholic Beverage Control Board prohibiting it, nothing compelled distributor to cease distributing an alcoholic beverage containing less than 5% alcohol by weight, and taxed and controlled as beer, but labeled as "malt liquor." *Scurlock v. Central Distribs., Inc.*, 223 Ark. 954, 269 S.W.2d 790 (1954).

Intoxicating Liquor.

This section does not define the term "intoxicating liquors" as it appeared in prior law similar to § 3-3-209. *Digiacoimo v. State*, 194 Ark. 24, 105 S.W.2d 78 (1937).

Subdivision (a)(3)(B) of this section does not state that beer of not more than 5% is not intoxicating. *State v. Hutchinson*, 194 Ark. 1057, 110 S.W.2d 7 (1937).

Cited: *Morley v. Cassinelli*, 216 Ark. 175, 224 S.W.2d 828 (1949); *Hinton v. State ex rel. Purcell*, 246 Ark. 341, 438 S.W.2d 57 (1969); *Wortham v. Little Rock Newspapers, Inc.*, 273 Ark. 179, 618 S.W.2d 156 (1981).

3-1-103. Exempted products.

(a)(1) The provisions of this act shall not in any manner be construed to apply to the manufacture, sale, and distribution of wines or vinous liquors manufactured, sold, and distributed by residents of Arkansas.

(2) All wines or vinous liquors which shall be manufactured without the confines of this state shall be legally sold, imported, transported,

possessed, and consumed only upon payment of the same privilege and excise taxes as provided for all other alcoholic liquors which are included and legalized under the provisions of this act, and traffic in such vinous liquors shall be subject to all regulations provided herein.

(b) Malt and vinous beverages containing more than three and two-tenths percent (3.2%) of alcohol by weight and not more than five percent (5%) of alcohol by weight shall be taxed and regulated as provided for malt and vinous beverages containing not more than three and two-tenths percent (3.2%) alcohol by weight under the provisions of chapter 5, subchapter 2 of this title.

(c)(1) After having been manufactured and prepared for the market, the articles enumerated in this subsection shall not be subject to the provisions of this act:

(A) Denatured alcohol or denatured rum produced and used as provided by laws and regulations now or hereinafter in force;

(B) Medicinal preparations manufactured in accordance with formulae prescribed in the United States Pharmacopoeia — National Formulary, or by the American Institute of Homeopathy that are unfit for the use for beverage purposes;

(C) Patented, patent, and proprietary medicines that are unfit for use for beverage purposes;

(D) Toilet, medicinal, and antiseptic preparations and solutions that are unfit for use for beverage purposes;

(E) Flavoring extracts and syrups that are unfit for use as a beverage or for intoxicating beverage purposes;

(F) Vinegar and preserved sweet cider;

(G) Alcohol medicated according to such formulae as will render it unfit for beverage purposes and which is to be sold for legitimate external use;

(H) Alcohol for mechanical and scientific purposes if unfit for a beverage;

(I) Wines.

(2) Any person who manufactures, purchases, or possesses any of the articles mentioned in this subsection or preparations fit for beverage purposes which are authorized to be manufactured, which may be used in the manufacture of other preparations compounded in accordance with formulae prescribed in the United States Pharmacopoeia — National Formulary, or by the American Institute of Homeopathy, which preparations when so manufactured are unfit for use for beverage purposes, or in the manufacture of patented, patent, and proprietary or other medicines, or for physicians' prescriptions, which are unfit for use for beverage purposes, may purchase and possess liquors for that purpose. Such person shall keep such records as are required by the Director of the Alcoholic Beverage Control Division.

(3) No such manufacturer shall sell, use, or dispose of any liquor otherwise than as an ingredient of the articles authorized to be manufactured therefrom.

- (4) No more alcohol shall be used in the manufacture of any syrup or extract than the quantity necessary for the extraction or solution of the elements mentioned therein and for the preservation of the article.
- (5) The provisions of this act shall not apply to pure, ethyl, or denatured alcohol intended for use or used for scientific, chemical, mechanical, industrial, medicinal, or culinary purposes or for use in the manufacture of patented, patent, proprietary, medicinal, pharmaceutical, antiseptic, toilet, scientific, chemical, mechanical, and industrial preparations or products, unfit for beverage purposes. Any person taking advantage of this subsection shall keep any records as are required by the director.
- (6) Any person who shall knowingly sell any of the articles mentioned in this subsection for beverage purposes or any extract or syrup for intoxicating beverage purposes, or who shall sell any of the same under circumstances for which the seller might reasonably deduce the intention of the purchaser to use them for such purpose, shall be subject to the penalties provided in this act.

History. Acts 1935, No. 108, Art. 1, § 6; 1935, No. 108, Art. 3, § 21; 1935, No. 108, Art. 8, § 2; Pope's Dig., §§ 14099, 14126, 14171; A.S.A. 1947, §§ 48-107, 48-109, 48-110.

Meaning of "this act". See note to § 3-1-101.

Cross References. Denatured alcohol, sale for beverage purposes prohibited, § 3-3-214.

CASE NOTES

Alcoholic Content.

Alcoholic content of a malt beverage controls in determining whether it should be taxed, regulated, and controlled as a "spirituous, vinous, and malt liquor" under this act and Acts 1935, No. 109, or as "beer and light wines" under § 3-5-201 et seq. as amended. *Scurlock v. Central Dis-*

tribs., Inc., 223 Ark. 954, 269 S.W.2d 790 (1954).

Cited: *Morley v. Cassinelli*, 216 Ark. 175, 224 S.W.2d 828 (1949); *Brown v. Cheney*, 233 Ark. 920, 350 S.W.2d 184 (1961); *Wortham v. Little Rock Newspapers, Inc.*, 273 Ark. 179, 618 S.W.2d 156 (1981).

CHAPTER 2

ADMINISTRATION AND ENFORCEMENT

- SUBCHAPTER.
1. GENERAL PROVISIONS.
 2. PRIMARY REGULATORY AGENCIES.
 3. OTHER ENFORCING AGENCIES.
 4. DISTRIBUTION.

RESEARCH REFERENCES

Am. Jur. 45 Am. Jur. 2d, Intox. L., § 22 et seq.

C.J.S. 48 C.J.S., Intox. L., § 21 et seq.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

3-2-101. Interest of enforcement officers in alcoholic liquors prohibited.

SECTION.

3-2-102. [Repealed.]

3-2-103. Information to be submitted by applicants.

Effective Dates. Acts 1935, No. 108, Art. 10: approved Mar. 16, 1935. Emergency clause provided: "Whereas, the repeal of the Eighteenth Amendment to the Constitution of the United States has created an emergency which requires immediate control of intoxicating liquors; and

"Whereas, the present state revenue does not meet the needs for the maintenance and development of the State Government and its agencies and the state's credit is threatened with impairment, an emergency is declared to exist and this act shall become a law and be effective on its passage and approval or nonaction by the Governor."

Acts 1935, No. 132, § 11: Mar. 19, 1935. Emergency clause provided: "It is declared

to be a fact that the enforcement of all liquor laws has broken down in this state; that circuit judges are handicapped in enforcing the law as it now stands and that it is necessary that the circuit judges be armed with additional powers for enforcing said laws and held responsible for the results. It is further declared to be a fact that the use of the highways by persons incompetent to drive motor vehicles constitutes a great hazard.

"Now, therefore, an emergency is declared to exist and this act is found to be necessary for the preservation of the public peace, health, and safety, and it shall go into effect immediately after its passage and approval."

3-2-101. Interest of enforcement officers in alcoholic liquors prohibited.

(a) Neither the Director of the Department of Finance and Administration nor any officer, employee, deputy, or assistant thereof shall have any direct or indirect interest in or on any premises where alcoholic liquors are manufactured or sold, nor shall he have any direct or indirect interest in any business wholly or partially devoted to the manufacture or sale of alcoholic liquors or own any stock in any corporation which has any direct or indirect interest in the premises where alcoholic liquors are manufactured or sold or in any business wholly or partially devoted to the manufacture or sale of alcoholic liquors.

(b) Any person violating any provision of this section shall, in addition to the penalty provided in this act, forfeit his office or employment or be removed therefrom.

History. Acts 1935, No. 108, Art. 2, § 2; Pope's Dig., § 14103; A.S.A. 1947, § 48-202.

Publisher's Notes. This section may apply to the Directors of the Alcoholic Beverage Control Division and the Alcoholic Beverage Control Enforcement Divi-

sion as a result of the transfers of authority detailed in the notes to subchapter 2 of this chapter.

Meaning of "this act". Acts 1935, No. 108, codified as §§ 3-1-101 — 3-1-103, 3-2-101, 3-2-205, 3-3-101 — 3-3-103, 3-3-212, 3-3-401, 3-3-404, 3-3-405, 3-4-101 —

3-4-103, 3-4-201, 3-4-202, 3-4-207 — 3-4-303, 3-4-501, 3-4-503, 3-4-601 — 3-4-605,
 211, 3-4-213, 3-4-214, 3-4-215 [repealed], 3-8-301 — 3-8-311, 3-8-313 — 3-8-317,
 3-4-217, 3-4-219, 3-4-220, 3-4-301 — 3-4-23-12-708.

3-2-102. [Repealed.]

Publisher's Notes. This section, concerning restriction of the governor's pardoning power, was repealed by Acts 2007, No. 653, § 1. The section was derived from Acts 1935, No. 132, § 6; Pope's Dig., § 14241; A.S.A. 1947, § 48-1106.

3-2-103. Information to be submitted by applicants.

(a) Any person applying for any permit issued by the Alcoholic Beverage Control Division, except as provided in subsection (b) or (c) of this section, shall meet the following requirements:

(1) No applicant shall have been found guilty of or pleaded guilty or nolo contendere to:

(A) Any felony by any court in the State of Arkansas; or

(B) Any similar offense by a court in another state or of any similar offense by a military or federal court;

(2)(A) In order to determine the applicant's suitability for a permit, the applicant shall be fingerprinted, and the fingerprints shall be forwarded for a criminal background check through the Department of Arkansas State Police.

(B) After the completion of the criminal background check through the department, the fingerprints shall be forwarded by the department to the Federal Bureau of Investigation for a national criminal history record check; and

(3) The applicant shall sign a release that allows the department to release:

(A) An Arkansas noncriminal justice background check to the Alcoholic Beverage Control Board; and

(B) A fingerprint card of the applicant to the Federal Bureau of Investigation to allow a federal fingerprint-based background check to be performed.

(b) No fingerprint submission or criminal background check shall be required for any person applying for a nonresident seller's permit or for a wholesale support center permit as authorized by § 3-5-1301 et seq.

(c) No fingerprint submission shall be required for any person applying for any permit that has a stated duration of five (5) days or less.

(d) This section is supplementary to any and all requirements that exist for various permits issued by the division, and all other individual permit requirements shall continue to apply to those respective permit applications.

(e) The division may adopt rules to implement the provisions of this section.

History. Acts 2005, No. 1248, § 1.

SUBCHAPTER 2 — PRIMARY REGULATORY AGENCIES

SECTION.

- 3-2-201. Alcoholic Beverage Control Board.
- 3-2-202. Director of Alcoholic Beverage Control — Staff.
- 3-2-203. Enforcement division — Director and staff.
- 3-2-204. Seals — Authentication of records.
- 3-2-205. Powers and duties.
- 3-2-206. Rules and regulations.
- 3-2-207. Qualifications and oath of personnel.
- 3-2-208. Solicitation or acceptance of bribe prohibited.
- 3-2-209. Enforcement — Duties of state and local officers.

SECTION.

- 3-2-210. Authority of enforcement agents.
- 3-2-211. Records and reports of licensees.
- 3-2-212. Denial, suspension, or revocation of licenses — Proceedings before division.
- 3-2-213. Denial, suspension, or revocation of license — Appeal to board.
- 3-2-214. Denial, suspension, or revocation of license — Review by board on own motion.
- 3-2-215. Conduct of hearings before board.
- 3-2-216. Appeal to courts.
- 3-2-217. Transcript fees.

Publisher's Notes. The Department of Alcoholic Beverage Control, which was the primary regulatory agency in the area of alcoholic beverage control at the time when most of the provisions of this subchapter were enacted, has been replaced by two divisions within the Department of Finance and Administration.

Acts 1951, No. 159, § 1, created the Department of Alcoholic Beverage Control which was a statutory administrative department of the state government. The section further provided that the department would consist of an Alcoholic Beverage Control Board, a Director of Alcoholic Beverage Control, two assistant directors, and such other personnel as the General Assembly authorized.

Acts 1951, No. 159, § 2, created an Alcoholic Beverage Control Board. This Alcoholic Beverage Control Board was abolished by Acts 1955, No. 113, § 1, and a new Alcoholic Beverage Control Board created within the Department of Alcoholic Beverage Control by § 2 of that act. See § 3-2-201.

Acts 1971, No. 38, § 5, in part transferred the Department of Alcoholic Beverage Control to the Alcoholic Beverage Control Division of the Department of Finance and Administration by a type 1 transfer and transferred the Enforcement Division of the Alcoholic Beverage Control Commission, by a type 2 transfer, to the Department of Public Safety.

Acts 1971, No. 38, § 5, further transferred the Department of Revenue which was created by Acts 1925, No. 88, as amended by Acts 1927, No. 115, and Acts 1953, No. 293, and its functions, powers, and duties to the Department of Finance and Administration. The section further provided that all references to the Department of Revenues and the Commissioner of Revenues would thereafter be deemed to refer to the Department of Finance and Administration and the Director of the Department of Finance and Administration.

Acts 1981, No. 45, § 9, provided in part that the Enforcement Division was transferred from the Department of Public Safety to the Department of Finance and Administration and would be located in a separate division to be known as the Enforcement Division of Alcoholic Beverage Control, which division would function separately and apart from the Alcoholic Beverage Control Division. The section further provided that all the powers, functions, and duties added to the Enforcement Division of Alcoholic Beverage Control subsequent to the enactment of Acts 1971, No. 38, would be vested in the Enforcement Division of Alcoholic Beverage Control within the Department of Finance and Administration. The section stated that nothing in the 1981 act should be construed to reduce any right that an employee of the Enforcement Division of

Alcoholic Beverage Control should have under any civil service or merit system.

As a consequence of these transfers, the alcoholic beverage control laws, except with respect to collection of taxes, are currently administered by two divisions within the Department of Finance and Administration: the Alcoholic Beverage Control Division and the Alcoholic Beverage Control Enforcement Division. The Alcoholic Beverage Control Division is the primary administrative agency and supervises, regulates, and controls the manufacture, transportation, sale, and consumption of alcoholic beverages. The Alcoholic Beverage Control Enforcement Division is the primary enforcement agency and, among other things, conducts inspections, investigates applicants for licenses, investigates permit violations, and confiscates illicit liquor. Each division is headed by its own director.

Pursuant to § 3-2-205, the collection of taxes and permit and license fees is now the responsibility of the Director of the Department of Finance and Administration.

Where possible, the language of these sections has been revised to reflect the current regulatory scheme. Where the statutory language does not readily permit such revision, the original language has been retained and Publisher's Notes have been inserted to explain current practice.

Effective Dates. Acts 1935, No. 108, Art. 10: approved Mar. 16, 1935. Emergency clause provided: "Whereas, the repeal of the Eighteenth Amendment to the Constitution of the United States has created an emergency which requires immediate control of intoxicating liquors; and

"Whereas, the present state revenue does not meet the needs for the maintenance and development of the State Government and its agencies and the state's credit is threatened with impairment, an emergency is declared to exist and this act shall become a law and be effective on its passage and approval or nonaction by the Governor."

Acts 1951, No. 159, § 24: July 1, 1951.

Acts 1953, No. 109, § 3: Feb. 20, 1953. Emergency clause provided: "The General Assembly finds that it is impossible under the present law for the Alcoholic Beverage Control Board or its director to adequately supervise, regulate, and control the sale of

alcoholic beverages in the State of Arkansas; that such regulation and control is necessary for the preservation of the public peace, health, and safety; and that the regulation and control as provided by this act is necessary to public peace, health, and safety. Therefore, an emergency is declared to exist and this act shall take effect immediately upon its passage and approval."

Acts 1955, No. 113, § 5: Mar. 1, 1955. Emergency clause provided: "Whereas, it is hereby found and determined by the General Assembly that much confusion and inconvenience now exists in the management of the Department of Alcoholic Beverage Control and would in the future exist unless this reorganization is made, and that the passage of this act would remedy this situation; therefore, this act being necessary for the preservation of the public health, peace, and safety, an emergency is hereby declared to exist and this act shall be in full force from the date of its approval."

Acts 1971, No. 343, § 4: Mar. 22, 1971. Emergency clause provided: "It is hereby found and determined by the General Assembly that the administration of the alcoholic beverage control laws of this state affect the public morals, safety, and welfare, and that the immediate passage of this act is necessary in order to provide for additional members of the Alcoholic Beverage Control Board in order to provide for efficient operation of said board, and to protect the public peace, health, safety, and morals. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1977, No. 941, § 3: Apr. 1, 1977. Emergency clause provided: "It is hereby found and determined by the General Assembly that the expense allowances now authorized for ABC enforcement officers are inadequate and are below the level of allowances provided to other enforcement officers, such as troopers of the Arkansas State Police; and that the immediate passage of this act is necessary to correct these inequities and to assure an adequate expense level for ABC enforcement officers, to encourage the recruitment and retention of competent ABC enforcement officers. Therefore, an emergency is

hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1981, No. 45, § 15: July 1, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that the agencies, departments, and programs now performed through the Department of Public Safety could more efficiently and economically perform their respective duties and responsibilities through reorganized agencies and departments operating as separate entities; that substantial savings could be made by eliminating the central services of the Department of Public Safety; and that the immediate passage of this act is necessary to provide for advance planning for more efficient administration after the close of the current fiscal biennium of the various public safety programs of this state. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after July 1, 1981."

Acts 1983, No. 930, § 12: July 1, 1983. Emergency clause provided: "It is hereby found and determined by the Seventy-Fourth General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two year period; that the effectiveness of this act on July 1, 1983 is essential to the operation of the agency for which the appropriations in this act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this act beyond July 1, 1983 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after July 1, 1983."

Acts 1995, No. 537, § 15: July 1, 1995.

Acts 1995, No. 537, § 16: July 1, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that present law does not adequately protect the people of the State of Arkansas from unscrupulous activities of

nonresident manufacturers, suppliers, brewers and importers of beer; that the present law does not contain procedures for registration of nonresident manufacturers, suppliers, brewers and importers of beer, nor enforcement of current laws against such groups; and that the present law does not empower the Alcoholic Beverage Division to effectively monitor the activities of manufacturers, suppliers, brewers and importers of beer. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1995."

Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor [sic], it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2001, No. 196, § 2: July 1, 2001. Emergency clause provided: "It is found and determined by the General Assembly that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 2001 is essential to the operation of the agency in providing reimbursement allowance and expenses of ABC Enforcement officers, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 2001 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is declared to

exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on July 1, 2001."

3-2-201. Alcoholic Beverage Control Board.

- (a) There is created an Alcoholic Beverage Control Board.
- (b) The board shall consist of five (5) persons appointed by the Governor, subject to confirmation by the Senate, for a term of six (6) years.
- (c) The Chair of the board shall be designated by the Governor and may be removed as chair at any time by the Governor.
- (d) All action by the board shall be by a majority vote of the full membership of the board.
- (e) The board shall take no official action in connection with any matter except at a regular or special meeting in the office of the board at Little Rock, Arkansas.
- (f) The board is charged with the management of the Alcoholic Beverage Control Division.
- (g) In addition to any other powers, duties, and authority, the board shall be vested with the additional authority to establish written policies for the enforcement, by the Alcoholic Beverage Control Enforcement Division, of the laws and regulations affecting alcoholic beverage control.
- (h) The board shall have the power of review over the actions of the head of the enforcement division and its employees, including all disciplinary actions taken by the head of the division against any division employee and may, in any particular case, reverse such actions for good cause.
- (i) The members of the board may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq.

History. Acts 1953, No. 109, § 2; 1955, No. 113, §§ 2, 3; 1971, No. 343, § 1; 1981, No. 45, § 9; 1981, No. 790, § 8; A.S.A. 1947, §§ 48-1302.1 — 48-1302.3, 48-1314.2, 48-1317.1; Acts 1997, No. 250, § 10.

Publisher's Notes. As originally composed, the Alcoholic Beverage Control Board had three members whose terms were arranged so that one term expired every two years on December 15. Acts

1971, No. 343, § 1, added two members to the board whose initial terms expired on January 14, 1973, and January 14, 1975, and whose successors were appointed for six-year terms. It provided that nothing in the act would modify, amend, or repeal any action previously taken by the board, but that the enlarged board could modify, amend, or repeal such actions by a majority vote.

RESEARCH REFERENCES

A.L.R. Interplay between Twenty-First Amendment and Commerce Clause concerning state regulation of intoxicating liquors. 116 A.L.R.5th 149.

Ark. L. Rev. Watkins, Open Meetings Under the Arkansas Freedom of Information Act, 38 Ark. L. Rev. 268.

CASE NOTES

Majority Vote.

Board order issued without majority approval was not a valid, appealable or-

der. *Durkee v. Arkansas ABC Bd.*, 11 Ark. App. 151, 667 S.W.2d 376 (1984).

3-2-202. Director of Alcoholic Beverage Control — Staff.

(a) The Director of Alcoholic Beverage Control shall be an attorney duly authorized to practice law by the Supreme Court of Arkansas, who shall present all evidence tending to prove violations of the law or regulations at hearings held by the Alcoholic Beverage Control Board.

(b) The director shall employ such other personnel as he may deem necessary and as may be authorized by the General Assembly.

(c) All personnel employed by the director shall be subject to the approval of the board.

(d) Any person employed by the director may be removed by him at any time subject to the approval of the board.

History. Acts 1951, No. 159, § 4; A.S.A. 1947, § 48-1304.

Publisher's Notes. It is not clear whether this section now applies to the Director of the Alcoholic Beverage Control Division. In the years immediately prior to publication of this Code, the Director of the Alcoholic Beverage Control Division was, in actual practice, appointed by the Director of the Department of Finance and Administration with the approval of the Governor. Pursuant to § 3-2-203, the head of the Alcoholic Beverage Control

Enforcement Division is also appointed by the Director of the Department of Finance and Administration.

Although regulatory authority over alcoholic beverages is now divided between the Alcoholic Beverage Control Division and the Alcoholic Beverage Control Enforcement Division, each of which has its own director, subsections (c) and (d) of this section may still apply to officers and employees of the Alcoholic Beverage Control Board and the two regulatory divisions.

3-2-203. Enforcement division — Director and staff.

(a) The Director of the Alcoholic Beverage Control Enforcement Division shall be appointed by the Director of the Department of Finance and Administration and shall serve at his pleasure.

(b) All enforcement personnel of the division shall be named by the head of the division.

History. Acts 1977, No. 941, § 1; 1981, No. 45, § 9; 1983, No. 930, § 7; 1985, No. 297, § 1; A.S.A. 1947, §§ 48-1317.1, 48-1322; Acts 2001, No. 196, § 1.

3-2-204. Seals — Authentication of records.

(a) The Director of the Alcoholic Beverage Control Division and the Alcoholic Beverage Control Board each may adopt, keep, and use a common seal. This seal shall be used for authentication of the records, process, and proceedings of the director and board, respectively. Judicial notice shall be taken of each of these seals in all of the courts of the state.

(b) Any process, notice, or other paper which the director may be authorized by law to issue shall be deemed sufficient if signed by the director and authenticated by the seal of the director.

(c) Any process, notice, or other paper which the board may be authorized by law to issue shall be deemed sufficient if signed by the Chair of the Alcoholic Beverage Control Board and authenticated by the seal of the board.

(d) All acts, orders, proceedings, rules, regulations, entries, minutes, and other records of the director and all reports and documents filed with the director may be proved in any court of this state by copy thereof, certified by the director with the seal of the director attached.

(e) All acts, orders, proceedings, rules, regulations, entries, minutes, and other records of the board and all reports and documents filed with the director may be proved in any court of this state by copy thereof, certified by the chair of the board with the seal of the board attached.

History. Acts 1951, No. 159, § 10;
A.S.A. 1947, § 48-1309.

RESEARCH REFERENCES

Ark. L. Rev. Documentary Evidence —
Arkansas, 15 Ark. L. Rev. 79.

3-2-205. Powers and duties.

(a) The Alcoholic Beverage Control Division and the Alcoholic Beverage Control Enforcement Division shall have full responsibility for all phases of alcoholic beverage control in Arkansas.

(b) The Alcoholic Beverage Control Division shall have the following powers, functions, and duties:

(1) To fix by rule the standards of manufacturing, rectifying, and blending in order to ensure the use of proper ingredients and methods in the manufacturing, rectifying, and blending of vinous, spirituous, or malt liquors to be sold in the state;

(2) To adopt rules and regulations for the supervision and control of the manufacture and sale of vinous (except wines), spirituous, or malt liquors throughout the state not inconsistent with law;

(3) To prescribe forms of applications for permits under this act and of all periodic reports deemed necessary to be made by any permittee;

(4) To fix the hours during which vinous, spirituous, or malt liquors may be sold or dispensed at retail, as provided by this act;

(5) To keep records in proper form to be prescribed by the Director of the Alcoholic Beverage Control Division and the Director of the Department of Finance and Administration of all permits issued and all permits revoked under the provisions of this act and to keep records in such form so as to provide ready information as to the identity of all permits, including the names of stockholders and directors of corporations holding permits, and also the location of all permitted premises; and

(6) To adopt rules and regulations for the supervision and control of nonresident beer sellers' permits.

(c) The Director of the Alcoholic Beverage Control Division shall have the following powers, functions, and duties:

(1) To receive applications for and to issue, refuse, suspend, and revoke licenses to manufacturers, processors, distributors, wholesalers, retailers, and transporters of alcoholic beverages;

(2) To call upon other administrative departments of the state, county, and city governments, sheriffs, city police departments, city marshals, and peace officers for such information and assistance as the Director of the Alcoholic Beverage Control Division may deem necessary in the performance of the duties imposed upon him by this subchapter;

(3) To inspect or cause to be inspected any premises where alcoholic beverages are manufactured, distributed, or sold;

(4) In the conduct of any hearing:

(A) To examine or cause to be examined under oath any person, and examine or cause to be examined books and records of any licensee;

(B) To hear testimony and to take proof material for his or her information and the discharge of his duties hereunder;

(C) To administer or cause to be administered oaths; and

(D) For any such purposes, to issue subpoenas to require the attendance of witnesses and the production of books. These subpoenas shall be effective in any part of this state. Any circuit court, either in term time or vacation, by order duly entered may require the attendance of witnesses or the production of relevant books subpoenaed by the Director of the Alcoholic Beverage Control Division, and the court may compel obedience to its order by proceedings for contempt;

(5) Such other powers, functions, and duties as are or may be imposed or conferred upon him or her by law; and

(6) Any other powers, functions, and duties pertaining to the control of alcoholic beverages which previously were granted to the Director of the Department of Finance and Administration and which are not specifically delegated to the board by the provisions of this subchapter.

(d) The Director of the Alcoholic Beverage Control Enforcement Division shall have the following functions, powers, and duties:

(1) To call upon other administrative departments of the state, county, and city governments, sheriffs, city police departments, city marshals, and peace officers for such information and assistance as he or she may deem necessary in the performance of the duties imposed upon the Director of the Alcoholic Beverage Control Division by this subchapter;

(2) To inspect or cause to be inspected any premises where alcoholic beverages are manufactured, distributed, or sold;

(3) Such other powers, functions, and duties as are or may be imposed or conferred upon him or her by law; and

(4) Any other powers, functions, and duties pertaining to the control of alcoholic beverages which previously were granted to the Director of the Department of Finance and Administration and which are not specifically delegated to the Director of the Alcoholic Beverage Control Division or the board by the provisions of this subchapter.

(e)(1) The power and duty to collect taxes imposed on alcoholic beverages and to collect permit and license fees levied for the privilege of manufacturing, processing, selling, and transporting alcoholic beverages is specifically excepted from the powers and duties granted or assigned to the Alcoholic Beverage Control Division and the Alcoholic Beverage Control Enforcement Division. Provided, however, the permit or license holders' failure to pay taxes imposed on alcoholic beverages or any state or local gross receipts and compensating use taxes in a timely manner shall be grounds for the revocation or nonrenewal of their permits or licenses by the board.

(2) The collection of all such taxes and permit or license fees shall be by the Director of the Department of Finance and Administration and his or her agents and employees, as provided by law.

(3) The Director of the Department of Finance and Administration shall make a biennial report to the Governor and the General Assembly of his or her activities for the past year, which shall include statistics as to the amount of vinous (except wines), spirituous, or malt liquors manufactured in the State of Arkansas and the disposition thereof; the increase or decrease in their consumption over the preceding year; the amount of taxes and permit fees collected; and such other information as he or she deems advisable.

(4) The Director of the Department of Finance and Administration shall report by June 1 of each year to the Alcoholic Beverage Control Division and the board any and all permit and license holders who are more than ninety (90) days delinquent on any alcoholic beverage sales tax, excise tax, supplemental mixed drink tax, any other tax relating to the sale or dispensing of alcoholic beverages, or any state or local gross receipts or compensating use taxes.

History. Acts 1935, No. 108, Art. 2, § 3; Pope's Dig., § 14104; Acts 1951, No. 159, §§ 6, 11; A.S.A. 1947, §§ 48-203, 48-1305, 48-1310; Acts 1993, No. 779, § 1; 1995, No. 537, § 11.

Publisher's Notes. Acts 1935, No. 108, Art. 1, § 6, provides that the exclusion of wines from the provisions of Acts 1935, No. 108 is intended to exclude only wines or vinous liquors manufactured in the State of Arkansas.

Acts 1951, No. 159, § 6, provided, in part, that the Department of Alcoholic Beverage Control, upon completion of its staff, would assume the duties and powers formerly assigned to the Commissioner of

Revenues concerning the regulation, supervision, and control of the manufacture, processing, sale, and transportation of liquor, beer, and wine (including native wine) and all other alcoholic beverages.

Meaning of "this act". Acts 1935, No. 108, codified as §§ 3-1-101 — 3-1-103, 3-2-101, 3-2-205, 3-3-101 — 3-3-103, 3-3-212, 3-3-401, 3-3-404, 3-3-405, 3-4-101 — 3-4-103, 3-4-201, 3-4-202, 3-4-207 — 3-4-211, 3-4-213, 3-4-214, 3-4-215 [repealed], 3-4-217, 3-4-219, 3-4-220, 3-4-301 — 3-4-303, 3-4-501, 3-4-503, 3-4-601 — 3-4-605, 3-8-301 — 3-8-311, 3-8-313 — 3-8-317, 23-12-708.

Acts 1995, No. 537, codified as §§ 3-5-1301 — 3-5-1310 and § 3-2-205.

Cross References. Vinous, spirituous, and malt liquors defined, § 3-1-102.

RESEARCH REFERENCES

Ark. L. Rev. Administrative Law in Arkansas, 4 Ark. L. Rev. 107.

CASE NOTES

ANALYSIS

Hours of Sale.
Permits.
Regulations.

Hours of Sale.

A city ordinance which prohibited private clubs from serving or allowing consumption of mixed drinks between certain hours was not contrary to subdivision (b)(4) of this section, since the ordinance was not concerned with retail sales but with consumption on the premises of private clubs. *Tompos v. City of Fayetteville*, 280 Ark. 435, 658 S.W.2d 404 (1983).

Permits.

Denial of retail liquor permit was held

not to be arbitrary, discriminatory, or an abuse of discretion and mandamus would not lie to compel issuance of permit. *Hardin v. Cassinelli*, 204 Ark. 1016, 166 S.W.2d 258 (1942).

Regulations.

Regulation adopted pursuant to subdivision (b)(2) of this section held controlling over invalid statute as to distance of retail liquor outlet from church property. *Smith v. Ridgeview Baptist Church, Inc.*, 257 Ark. 139, 514 S.W.2d 717 (1974).

Cited: *Hinton v. State ex rel. Purcell*, 246 Ark. 341, 438 S.W.2d 57 (1969); *Rowell v. Austin*, 276 Ark. 445, 637 S.W.2d 531 (1982).

3-2-206. Rules and regulations.

(a) The Director of the Alcoholic Beverage Control Division shall adopt and promulgate such rules and regulations as shall be necessary to carry out the intent and purposes of this subchapter and any other alcohol control acts enforced in this state.

(b) All rules and regulations of general application, including the amendment or repeal thereof, shall first be submitted by the director to the Alcoholic Beverage Control Board for its approval and upon approval shall be filed in the office of the Secretary of State.

(c) All the valid rules and regulations adopted under the provisions of this subchapter shall be absolutely binding upon all licensees and enforceable by the director through the power of suspension or cancellation of licenses.

(d) It is intended by this grant of power to adopt rules and regulations that the director shall be clothed with broad discretionary power to govern the traffic in alcoholic liquor and to enforce strictly all the provisions of the alcohol control laws of this state.

History. Acts 1951, No. 159, § 12; A.S.A. 1947, § 48-1311.

CASE NOTES

ANALYSIS

Authority of Board.
Grant or Denial of Permit.
Revocation of Permits.
Suspension.

Authority of Board.

The ABC Board is vested with the power to determine whether public convenience and advantage will be promoted by granting permits and the director is authorized to promulgate regulations and has broad discretionary power to enforce such provisions. *Arkansas ABC Bd. v. Muncrief*, 308 Ark. 373, 825 S.W.2d 816 (1992).

Grant or Denial of Permit.

Evidence, standing alone, was too speculative to support the Alcoholic Beverage Control Board's denial of an off-premises beer permit based upon board's regulation that permitted premises promote public convenience and advantage; however, there was substantial evidence to support the Alcoholic Beverage Control Board's denial of an application for an off-premises beer permit based upon board's regulation requiring that adequate police protection be available to

permitted premises. *Copeland v. ABC Bd.*, 4 Ark. App. 143, 628 S.W.2d 588 (1982).

Revocation of Permits.

The right to sell intoxicants is not an individual right similar to holding a professional license, but rather is a special privilege which carries the absolutely binding obligation to strictly observe all rules, regulations, and laws affecting the sale and consumption of alcoholic beverages. *Holifield v. Arkansas ABC Bd.*, 273 Ark. 305, 619 S.W.2d 621 (1981).

Suspension.

Evidence supported the Alcoholic Beverage Control Board's decision to suspend permit and the board had authority to do so under this section and §§ 3-2-212 and 3-2-214 regardless of whether misconduct was also a criminal violation. It was not the legislature's intent that the Alcoholic Beverage Control Board may revoke or suspend a beer permit for conduct that does not rise to the level of a criminal violation but may not revoke or suspend a permit for more serious conduct. *Coburn v. Arkansas State ABC Bd.*, 278 Ark. 514, 647 S.W.2d 445 (1983).

Cited: *Barrett Hamilton, Inc. v. Heublein, Inc.*, 242 Ark. 900, 416 S.W.2d 309 (1967).

3-2-207. Qualifications and oath of personnel.

(a) No person shall be appointed a member of the board or a director, agent, or employee of the Alcoholic Beverage Control Division, the Alcoholic Beverage Control Enforcement Division, or the Alcoholic Beverage Control Board who is not a citizen of the United States and who has not resided in the State of Arkansas successively for two (2) years immediately preceding the date of this appointment.

(b) No person shall be so appointed who has been convicted of or pleaded guilty to a felony or any violation of any federal or state law concerning the manufacture or sale of alcoholic beverages or malt beverages prior or subsequent to the passage of this subchapter, nor shall a person be appointed who has paid a fine or penalty in settlement in any prosecution against him or her for any violation of such laws or who shall have forfeited his or her bond to appear in court to answer charges for any such violation.

(c) No appointee may, directly or indirectly, individually or as a member of a partnership, or as a shareholder of a corporation, have any interests whatsoever in the manufacture, sale, or distribution of alcoholic beverages, nor receive any compensation or profit therefrom.

(d) No appointee shall be an elected or appointed officer or employee of this state.

(e) Each member of the board, director, and enforcement agent shall take and subscribe to an oath that he will support and enforce the provisions of this subchapter, the alcohol control laws of this state, the Arkansas Constitution, and the United States Constitution.

History. Acts 1951, No. 159, §§ 7, 8; A.S.A. 1947, §§ 48-1306, 48-1307; Acts 1993, No. 122, § 1.

3-2-208. Solicitation or acceptance of bribe prohibited.

(a) No member or employee of the Alcoholic Beverage Control Board or director or any employee of the Alcoholic Beverage Control Division or the Alcoholic Beverage Control Enforcement Division shall solicit or accept, directly or indirectly, any gift, gratuity, emolument, or employment from any manufacturer, distributor, wholesaler, or retailer of alcoholic beverages or any person who is an applicant for any license under this subchapter, or from any officer, agent, or employee thereof.

(b) No such person shall directly or indirectly solicit, request from, or recommend to any such person or to any officer, agent, or employee thereof the appointment of any person to any place or position.

History. Acts 1951, No. 159, § 9; A.S.A. 1947, § 48-1308.

3-2-209. Enforcement — Duties of state and local officers.

(a) The Alcoholic Beverage Control Division and the Alcoholic Beverage Control Enforcement Division shall fully and faithfully enforce the provisions of this subchapter and any other alcohol control law of this state relating to the manufacture, storage, transportation, distribution, sale, and consumption of alcoholic beverages.

(b)(1) It shall be the responsibility of all law enforcement personnel of every village, town, city, county, and any other political subdivision of this state to fully and faithfully enforce the provisions of this subchapter and other alcohol control laws of this state relating to the manufacture, storage, transportation, distribution, sale, and consumption of alcoholic beverages.

(2) Nothing in this subsection shall be construed to prevent or prohibit the exercise of concurrent jurisdiction by the Alcoholic Beverage Control Enforcement Division.

History. Acts 1951, No. 159, §§ 18, 19; A.S.A. 1947, §§ 48-1317, 48-1318.

RESEARCH REFERENCES

Ark. L. Rev. Official Misconduct under the Arkansas Criminal Code, 30 Ark. L. Rev. 160.

CASE NOTES**Authority of Prosecuting Attorneys.**

Prosecuting attorneys have concurrent authority with the Auditor of State and the Commissioner of Revenues (now the Director of the Alcoholic Beverage Control Division) to enforce the liquor laws of the state, and prosecuting attorney was

within his authority when he proceeded by proper action to seize alcoholic liquors for the purpose of collecting past due taxes thereon. *Southwestern Distilled Products, Inc. v. Trimble*, 198 Ark. 970, 132 S.W.2d 196 (1939) (decision under prior law).

3-2-210. Authority of enforcement agents.

(a) The right of any enforcement agent or law enforcement officer to enter, search, inspect records, and seize contraband in or on any licensed premises shall be deemed to be a condition of the license or permit to sell alcoholic beverages granted by this state.

(b) All duly designated enforcement agents shall have all powers, rights, and protection provided to all other law enforcement officers by the laws of this state, specifically including the power of arrest and service of warrants and the right to bear arms in the line of duty.

History. Acts 1951, No. 159, §§ 20, 21; A.S.A. 1947, §§ 48-1319, 48-1320.

3-2-211. Records and reports of licensees.

(a) Each licensee shall keep complete and accurate records of all alcoholic beverages manufactured, distributed, transported, stored, purchased, or sold within or imported into this state.

(b) The records shall be of such kind and form and shall be preserved for such period as the Director of the Alcoholic Beverage Control Division shall prescribe. The records shall be accessible for inspection during the regular hours of business by the authorized agents or employees of the Alcoholic Beverage Control Division or the Alcoholic Beverage Control Enforcement Division and the authorized law enforcement officers of the respective cities, towns, or counties in which the place of business is located.

(c) The Director of the Alcoholic Beverage Control Division shall also have the authority to require the submission of reports by licensees and in such form as he or she may prescribe.

History. Acts 1951, No. 159, § 22; A.S.A. 1947, § 48-1321.

3-2-212. Denial, suspension, or revocation of licenses — Proceedings before division.

(a) All proceedings for the suspension and revocation of licenses shall be before the Director of the Alcoholic Beverage Control Division.

(b) The proceedings shall be in accordance with rules and regulations established by the director and not inconsistent with law.

(c) No license shall be revoked except after a hearing by the director with reasonable notice to the licensee and an opportunity to appear and defend.

(d) However, the director shall not be bound by the legal rules of evidence in conducting hearings and in making his or her decisions and may take into consideration any testimony, papers, or documents which he or she may deem relevant to the issue.

(e)(1) Whenever the director shall refuse an application for any license or shall suspend or revoke any license, he or she shall prepare an order so providing which shall be signed by the director or some person designated by him or her, and the seal of the director shall be affixed thereto.

(2) The order shall be mailed by registered mail by the director to the applicant at the address as shown on the application or to the licensee at the address of the premises licensed, as the case may be.

(3) The order shall be final and binding on all parties until the order has been appealed as provided for in § 3-2-213 and a decision has been rendered by the Alcoholic Beverage Control Board.

History. Acts 1951, No. 159, §§ 13, 14; A.S.A. 1947, §§ 48-1312, 48-1313.

Publisher's Notes. Acts 1943, No. 281, §§ 1, 2 provided, in part, that it would be unlawful for any person, firm, or corporation to sell any wine or beer on Sunday and that a second offense, as determined by the trial court, would be punished by a

fine, revocation of the license, and forfeiture of all money paid for the license. This revocation provision appears to conflict with, and may be impliedly repealed by, this section. See *State v. Lawrence*, 246 Ark. 644, 439 S.W.2d 819 (1969).

Cross References. Additional taxes, § 3-7-111.

CASE NOTES**ANALYSIS**

Implied Repeal.

Notice.

Suspension.

Implied Repeal.

The provisions of this section vesting in the director the sole power to revoke liquor licenses repealed the provisions of Acts 1933 (1st Ex. Sess.), No. 7, § 17, which gave the convicting court the same power. *State v. Lawrence*, 246 Ark. 644, 439 S.W.2d 819 (1969).

Notice.

There is no implication in this section that a beer licensee is entitled to notice that his permit is subject to revocation as well as suspension, since this section provides that no license shall be revoked until a hearing upon reasonable notice to the licensee, and since it is common knowledge that beer and liquor permits are subject to revocation for violations. *Holifield v. Arkansas ABC Bd.*, 273 Ark. 305, 619 S.W.2d 621 (1981).

Suspension.

Evidence supported board's decision to suspend permit and board had authority to do so under this section and §§ 3-2-206 and 3-2-214 regardless of whether misconduct was also a criminal violation. It was not the legislature's intent that the Alco-

holic Beverage Control Board may revoke or suspend a beer permit for conduct that does not rise to the level of a criminal violation but may not revoke or suspend a permit for more serious conduct. *Coburn v. Arkansas State ABC Bd.*, 278 Ark. 514, 647 S.W.2d 445 (1983).

3-2-213. Denial, suspension, or revocation of license — Appeal to board.

(a)(1) Any applicant or licensee aggrieved by an order of refusal, suspension, or revocation issued by the Director of the Alcoholic Beverage Control Division or any person or group of persons who have formally protested the issuance of any license before a decision has been rendered by the director and are aggrieved by the issuance of the license may appeal the order or decision to the Alcoholic Beverage Control Board by filing a notice of appeal.

(2) The notice of appeal of a director's decision or order shall be in a written form which shall be mailed or delivered to the offices of the Alcoholic Beverage Control Division.

(3) The notice of appeal must be mailed or delivered to the offices of the division within fifteen (15) days after the order to be appealed was received by the recipient, as shown by the certified mail return receipt card returned to the division. In the event that the person filing an appeal of the director's decision or order was not sent a certified letter of the same, then the fifteen-day appeal period begins on the date that the director's decision or order was issued.

(4) Whenever any notice of appeal is filed with the division, the director shall immediately notify the board of that fact.

(b)(1) A hearing shall be held within at least sixty (60) days after the date of the filing of the notice of appeal unless the person appealing consents to a later hearing.

(2) Not later than ten (10) days before the time fixed for the hearing, the director shall notify the board and the applicant, licensee, or protester of the time when and the place where the appeal shall be heard by the board.

(3) At the time and place so fixed for the hearing, the board shall proceed to hear the appeal.

(4) At any such hearing the applicant, licensee, or protester, and the director may be present in person or by agent or counsel and present evidence and argument.

(5) The board shall adopt such rules and regulations as it shall deem necessary to govern the procedure in the hearing, and the board shall not be bound by the legal rules of evidence in hearing appeals and in making its determination.

(c)(1) Within five (5) days after the hearing is concluded, the board shall render its written opinion, decision, or order on the appeal.

(2) A copy of the opinion, decision, or order shall be mailed by the division by certified mail to the applicant, licensee, or protester.

(3) The order and decision shall be final and binding on the director and the applicant, licensee, or protester.

(4) However, an appeal may be taken from any order suspending or revoking a license as provided for in this subchapter.

History. Acts 1951, No. 159, § 15; A.S.A. 1947, § 48-1314; Acts 1995, No. 652, §§ 1-5; 2005, No. 1193, § 1.

Amendments. The 2005 amendment substituted "sixty (60)" for "thirty (30)" in (b)(1).

CASE NOTES

ANALYSIS

Evidence.

Exhaustion of Administrative Remedies.

Suspension of Permits.

Time Limitations.

Evidence.

The testimony of citizens was properly received by the Alcoholic Beverage Control Board, pursuant to this section and § 25-15-213(4), in hearings on an application for retail liquor and beer off-premises permits and constituted substantial evidence supporting denial of the permits. *Stringfellow v. Alcoholic Beverage Control Bd.*, 3 Ark. App. 124, 623 S.W.2d 213 (1981).

Exhaustion of Administrative Remedies.

Licensee desiring to move permit to location outside city was not required to exhaust remedies under this section before challenging statute which prohibited such location. *Bell v. Adams*, 243 Ark. 895, 422 S.W.2d 691 (1968).

Suspension of Permits.

Evidence supported the Alcoholic Beverage Control Board's decision to suspend permit and board had authority to do so under this section and §§ 3-2-206 and 3-2-212 regardless of whether misconduct was also a criminal violation. It was not the legislature's intent that the Alcoholic Beverage Control Board may revoke or suspend a beer permit for conduct that does not rise to the level of a criminal violation but may not revoke or suspend a permit for more serious conduct. *Coburn v. Arkansas State ABC Bd.*, 278 Ark. 514, 647 S.W.2d 445 (1983).

Time Limitations.

Appeal de novo was properly dismissed where the corporate permittee to transfer permit from one location to another was not made party within the statutory time limit. *Smith v. Estes*, 259 Ark. 337, 533 S.W.2d 190 (1976).

Cited: *Jones v. Reed*, 267 Ark. 237, 590 S.W.2d 6 (1979); *Estes v. Walters*, 269 Ark. 891, 601 S.W.2d 252 (Ct. App. 1980); *Durkee v. Arkansas ABC Bd.*, 11 Ark. App. 151, 667 S.W.2d 376 (1984).

3-2-214. Denial, suspension, or revocation of license — Review by board on own motion.

(a) The Alcoholic Beverage Control Board is authorized on its own motion to review any action of the Director of the Alcoholic Beverage Control Division in granting or failing to grant, renewing or failing to renew, revoking or suspending, or failing to revoke or suspend upon complaint, any permit and, upon review, to set aside any action of the director in any of these respects:

(b) Any action by the director in any of these respects shall not become effective until the day following the next meeting of the board following the action by the director, and then only if the board fails to make a motion to exercise its right of review.

History. Acts 1953, No. 109, § 1; A.S.A. 1947, § 48-1314.1.

CASE NOTES

Penalties.

Alcoholic Beverage Control Board could revoke a beer permit after the Director of the Alcoholic Beverage Control Division had suspended it where evidence presented before the board was more damaging than that presented before the direc-

tor; even if the permit owner had not appealed, the board could, on its own motion, review the director's decision and determine its own appropriate penalty. *Holifield v. Arkansas ABC Bd.*, 273 Ark. 305, 619 S.W.2d 621 (1981).

3-2-215. Conduct of hearings before board.

(a) For the purpose of hearing or conducting any appeal authorized to be heard by it, the Alcoholic Beverage Control Board shall have power:

(1) To examine or cause to be examined, under oath, any licensee, the Director of the Alcoholic Beverage Control Division, the Director of the Alcoholic Beverage Enforcement Division, or any other person and to examine or cause to be examined the books and records of any such licensee;

(2) To hear testimony and to take proof material for its information in hearing an appeal;

(3) To administer or cause to be administered oaths; and

(4) To issue subpoenas requiring the attendance of witnesses and the production of records for any such purposes.

(b) The subpoenas shall be effective in any part of this state. Any circuit court may by order duly entered require the attendance of witnesses and the production of relevant records subpoenaed by the board, and the court may compel obedience to its orders by proceedings for contempt.

(c) An applicant involved in a hearing before the Director of the Alcoholic Beverage Control Division or the board shall be entitled on request to subpoena for the compulsory attendance of witnesses desired by him or her.

(d)(1) All witnesses shall be entitled to mileage and fees as are prescribed by law for witnesses in the circuit courts of the state.

(2) The mileage and fees of witnesses subpoenaed at the request of an applicant shall be paid by him or her.

History. Acts 1951, No. 159, § 16; A.S.A. 1947, § 48-1315.

3-2-216. Appeal to courts.

An appeal of the decision of the Alcoholic Beverage Control Board may be filed in conformance with the provisions of the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

History. Acts 1951, No. 159, § 17; A.S.A. 1947, § 48-1316; Acts 1995, No. 652, § 6.

CASE NOTES

ANALYSIS

Exhaustion of Administrative Remedies.
Scope of Review.
Sufficiency of Evidence.

Exhaustion of Administrative Remedies.

Licensee desiring to move permit to location outside city was not required to exhaust remedies under this section before challenging statute which prohibited such location. *Bell v. Adams*, 243 Ark. 895, 422 S.W.2d 691 (1968).

Scope of Review.

The trial court may reverse or modify the ABC Board's decision if it is not sup-

ported by substantial evidence or is arbitrary, capricious, or characterized by abuse of discretion, and the Supreme Court's review is similarly limited. *Arkansas ABC Bd. v. Muncrief*, 308 Ark. 373, 825 S.W.2d 816 (1992).

Sufficiency of Evidence.

Evidence was sufficient to sustain the board's approval of transfer of brand from one wholesaler to another and did not establish that board was not an impartial and disinterested tribunal. *Barrett Hamilton, Inc. v. Heublein, Inc.*, 242 Ark. 900, 416 S.W.2d 309 (1967).

Cited: *Jones v. Reed*, 267 Ark. 237, 590 S.W.2d 6 (1979).

3-2-217. Transcript fees.

(a) There is fixed a cost of one dollar and fifty cents (\$1.50) per page for each original page of transcript of record of proceedings had before the Director of the Alcoholic Beverage Control Division, pertaining to an application for the manufacture, selling, or dispensing of alcoholic beverages, or from a hearing of a violation against a permit which is appealed to the Alcoholic Beverage Control Board, and for each page of original transcript where an appeal is taken from any decision of the board to a circuit court.

(b) The fee as provided for herein shall be paid to the director by the person taking the appeal upon completion of the transcript, and the moneys shall be deposited into the general revenues of the State of Arkansas.

(c) All copies of the original transcript shall cost forty cents (40¢) per page, and the sums shall be collected and deposited as provided in subsection (b) of this section.

History. Acts 1981, No. 790, § 1; A.S.A. 1947, § 48-1315.1.

SUBCHAPTER 3 — OTHER ENFORCING AGENCIES

SECTION.

3-2-301. Circuit judges — Appointment of temporary officers and special prosecutors.

SECTION.

3-2-302. Circuit judges — Impeachment.
3-2-303. State Police.
3-2-304. Search warrants.

Cross References. Arrest by railroad conductor for drunkenness, § 23-12-708.

Effective Dates. Acts 1935, No. 132, § 11: Mar. 19, 1935. Emergency clause provided: "It is declared to be a fact that the enforcement of all liquor laws has broken down in this state; that circuit judges are handicapped in enforcing the law as it now stands and that it is necessary that the circuit judges be armed with additional powers for enforcing said laws and held responsible for the results. It is

further declared to be a fact that the use of the highways by persons incompetent to drive motor vehicles constitutes a great hazard.

"Now, therefore, an emergency is declared to exist and this act is found to be necessary for the preservation of the public peace, health, and safety, and it shall go into effect immediately after its passage and approval."

Acts 2003, No. 1185, § 2: Jan. 1, 2005, by its own terms.

3-2-301. Circuit judges — Appointment of temporary officers and special prosecutors.

(a) The circuit judges of this state are declared to be primarily responsible for the enforcement of laws against the unlawful manufacture and sale of intoxicating liquors.

(b)(1) Circuit judges are given authority to appoint an officer of the court in lieu of the sheriff to act temporarily and in cases specially designated in the enforcing of any of the laws when the circuit judge becomes convinced that the sheriff is for any cause neglecting his or her duties under the law imposed upon him or her.

(2) The compensation and expenses of such temporary officer shall be fixed by the judge making the appointment and shall be ordered paid by the judge out of an appropriation hereafter made. A certified copy of the judgment of the court fixing the compensation and expenses shall be sufficient authority for the Auditor of State to draw a voucher in payment of the compensation and expenses and of the Treasurer of State to pay a warrant when presented. The voucher shall be preaudited as other claims against the state.

(c)(1) Whenever the circuit judge becomes convinced that any prosecuting attorney is not performing his or her full duty with respect to the enforcement of the laws against the unlawful manufacture or sale of intoxicating liquors, he or she shall have authority to appoint a special prosecutor who shall be an attorney learned in the law and with at least ten (10) years' experience in the actual practice of law.

(2) The special prosecutor shall proceed to investigate and prosecute such cases as may be called to his or her attention by the circuit judge.

(3) The compensation and expenses of the special prosecutor shall be fixed by the circuit court and paid out of the fund hereafter appropriated. The order of the circuit judge fixing the compensation and expenses of the special prosecutor shall be sufficient authority upon which the Auditor of State may issue a voucher in payment thereof and of the Treasurer of State to pay a warrant when presented. The voucher shall be preaudited as other claims against the state.

(d) The temporary appointees in place of the sheriffs and the special prosecutors shall have all of the powers and authorities designated by law in the persons whom they are appointed to succeed.

History. Acts 1935, No. 132, §§ 2-4; Pope's Dig., §§ 14237-14239; A.S.A. 1947, §§ 48-1102 — 48-1104.

3-2-302. Circuit judges — Impeachment.

(a) If the Director of the Alcoholic Beverage Control Division shall report to the Governor that any circuit judge is not doing his or her duty with respect to the enforcement of the laws against the unlawful manufacture or sale of intoxicating liquors, and when the report is supported by competent evidence, the Governor may call the General Assembly into extra session to impeach the judge.

(b) It is declared to be an impeachable offense for any circuit judge to fail to exercise all of the powers of his or her office or the powers granted to him or her under § 3-2-301 to enforce the laws.

History. Acts 1935, No. 132, § 5; Pope's Dig., § 14240; A.S.A. 1947, § 48-1105.

RESEARCH REFERENCES

Ark. L. Rev. Comments: Removal and Discipline of Judges in Arkansas, Porter, 32 Ark. L. Rev. 545.

U. Ark. Little Rock L.J. Survey of Arkansas Law, Public Law, 1 U. Ark. Little Rock L.J. 230.

3-2-303. State Police.

(a) In addition to the duties otherwise prescribed by law upon the Department of Arkansas State Police, it shall be the duty of the department to assist in enforcing all of the laws of the State of Arkansas against the unlawful manufacture or sale of intoxicating liquors.

(b)(1) The Director of the Department of Arkansas State Police, the Assistant Director of the Department of Arkansas State Police, captains, lieutenants, rangers, and other employees of the director shall perform such duties as may be prescribed by the director with respect to the enforcement of the laws, and they shall have authority to take affidavits and to swear the persons signing the affidavits with respect to the violation of any law.

(2) The false swearing or making of the affidavits shall be deemed and punished as perjury.

(c)(1) The director, assistant director, captains, lieutenants, and rangers shall have all of the authority now vested in sheriffs and police officers to search for and seize intoxicating liquors unlawfully held in this state.

(2) They shall also have the same authority to make arrests for the violation of such laws and to serve any and all kinds of criminal process

issued by any of the courts in this state in connection with the enforcement of such laws.

History. Acts 1935, No. 132, § 1; Pope's Dig., § 14236; A.S.A. 1947, § 48-1101.

3-2-304. Search warrants.

(a) It is made and declared to be the duty of a circuit, district, and city court on information given, on its own knowledge, or when it has reasonable grounds to believe that alcohol, spirituous, ardent, vinous, malt, or fermented liquors, or any compound or preparation thereof commonly called tonics, bitters, or medicated liquors of any kind are kept in any prohibited district to be sold contrary to law or have been shipped into any prohibited district to be sold contrary to law, that it issue a warrant directed to some peace officer, directing in the warrant a search for intoxicating liquors and specifying in the warrant the place to be searched.

(b) However, this section shall not apply to the giving away or selling of native wines when the sale is authorized by law.

History. Acts 1899, No. 13, § 1, p. 11; C. & M. Dig., § 6184; A.S.A. 1947, § 48-1107; Acts 2003, No. 1185, §§ 1, 2.

Cross References. Seizure and forfeiture of spirituous, vinous, or malt liquors or beverages, §§ 3-3-311 — 3-3-315.

Effective Dates. Acts 2003, No. 1185, § 2: amendment effective by its own terms on Jan. 1, 2005.

CASE NOTES

ANALYSIS

Appeals.

Illegal Warrants.

Jurisdiction.

Jury Trials.

Nature of Proceeding.

Note. — Some of the following cases were decided prior to the supersession of former provisions of this section concerning the seizure and destruction of beverages by §§ 3-3-311 — 3-3-314.

Appeals.

A proceeding under this section is a civil action from which an appeal may be taken by the state from a final judgment of a justice of the peace. *White v. State*, 80 Ark. 598, 98 S.W. 377 (1906).

Illegal Warrants.

The fact that liquor was seized under an illegal warrant will not subject the officers

to civil liability. *O'Neal v. Parker*, 83 Ark. 133, 103 S.W. 165 (1907).

Jurisdiction.

Chancery courts do not have jurisdiction to issue an order forbidding a common carrier to deliver a consignment of liquor. *Saint Louis & S.F.R.R. v. State*, 93 Ark. 389, 125 S.W. 643 (1910); *United States Express Co. v. State ex rel. McDonald*, 99 Ark. 633, 139 S.W. 637 (1911).

Jury Trials.

A proceeding under this section is a summary proceeding for which a jury trial may not be demanded. *Kirkland v. State*, 72 Ark. 171, 78 S.W. 770 (1904); *Cole v. State*, 144 Ark. 533, 222 S.W. 1060 (1920).

Nature of Proceeding.

A proceeding under this section is directed against property and not against an individual and is to be considered and tried as civil actions are tried. *Kirkland v. State*, 72 Ark. 171, 78 S.W. 770 (1904).

A proceeding under this section is in rem, directed against the liquor regardless of by whom it is illegally used. *Osborne v. State*, 77 Ark. 439, 92 S.W. 406 (1906).

Cited: *Ferguson v. Josey*, 70 Ark. 94, 66 S.W. 345 (1902).

SUBCHAPTER 4 — DISTRIBUTION

SECTION.

- 3-2-401. Purpose.
- 3-2-402. Scope of subchapter.
- 3-2-403. Spirituous and vinous beverages — Registration of brands and labels — Designation of licensed wholesaler.
- 3-2-404. Request to change wholesalers — Contents of application.
- 3-2-405. Request to change wholesalers — Notice — Objections — Hearing — Disposition of proceedings.
- 3-2-406. Request to change wholesalers — Hearing — Time — Findings — Appeal.

SECTION.

- 3-2-407. Request to change wholesalers — Automatic approval.
- 3-2-408. Acquisition of right to sell, ship, or distribute a label.
- 3-2-409. Beer, malt products, or light wine.
- 3-2-410. Terms and conditions of agreements with wholesaler binding on successor.
- 3-2-411. Subchapter incorporated into division approvals — Applicability — Waiver.
- 3-2-412. Dual distributorship prohibited.

A.C.R.C. Notes. Acts 2007, No. 668, § 4, provided: "In the event that this act, or any part thereof, is determined by a court to be unconstitutional, this act shall become void and all wines, including native wines, distributed for sale in the State of Arkansas shall be distributed under § 3-2-401 et seq. and sold by licensed retailers under § 3-4-201 et seq."

Effective Dates. Acts 2007, No. 668, § 6: Mar. 29, 2007. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that lawsuits are currently pending in both Federal Court for the Eastern District of Arkansas and Pulaski County Circuit Court regarding the constitutionality of the laws being amended by this sub-

chapter; that the lawsuits are being defended by the office of the Arkansas Attorney General; and that immediate implementation of this act is necessary because any delay may result in substantial costs to the state. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

RESEARCH REFERENCES

Am. Jur. 45 Am. Jur. 2d, Intox. .L., §§ 123, 125, 127, 137, 245.

C.J.S. 48 C.J.S., Int. Liq., §§ 41 et seq., 101, 226.

3-2-401. Purpose.

This subchapter is promulgated pursuant to the authority granted to the State of Arkansas pursuant to the provisions of the Twenty-First Amendment to the United States Constitution specifically for the following purposes:

- (1) To prevent unfair business practices, discrimination, and undue control of such wholesalers by distillers, manufacturers, importers, and producers;
- (2) To maintain stability and healthy competition in the alcoholic beverage industry;
- (3) To promote and maintain a sound and stable system of distribution of alcoholic beverages; and
- (4) To promote the public health, safety, and welfare.

History. Acts 1991, No. 260, § 1.

3-2-402. Scope of subchapter.

This subchapter does not repeal or supersede any of the provisions of §§ 3-5-1101 et seq. and to the extent of any conflict, the provisions of §§ 3-5-1101 et seq. shall prevail.

History. Acts 1991, No. 260, § 11.

3-2-403. Spirituous and vinous beverages — Registration of brands and labels — Designation of licensed wholesaler.

Every manufacturer, importer, or producer of spirituous and vinous beverages, as defined by § 3-1-102, doing business in the State of Arkansas shall submit to the Alcoholic Beverage Control Division one (1) label for each brand of spirituous and vinous beverages to be shipped for the first time by the shipper into or within the state and shall designate in the application for registration one (1) licensed liquor wholesaler in the state, who shall be the exclusive distributor of such brand or label within the state. Such designated wholesaler shall be initially approved by the Director of the Alcoholic Beverage Control Division and shall not be changed or initially disapproved except for good cause, and the director shall determine good cause after a hearing pursuant to the provisions set out in this subchapter. Any brands or labels previously registered in this state and which have subsequently been withdrawn from distribution in this state shall be treated in the same manner as the initial registration of brands or labels and are subject to the provisions of this section.

History. Acts 1991, No. 260, § 2.

3-2-404. Request to change wholesalers — Contents of application.

Any distiller, manufacturer, importer, or producer desiring to change wholesalers with respect to any brand shall file with the Director of the Alcoholic Beverage Control Division a wholesaler change request containing the following information as applicable:

- (1) The name of each brand involved;
- (2) The case volume in Arkansas for each brand for the current year or portion thereof and the two (2) previous calendar years;
- (3) The name of the wholesaler currently distributing such brand;
- (4) The name of the proposed new wholesaler; and
- (5)(A) A detailed explanation of the specific business reasons for the request to change wholesalers.

(B) Business reasons which may be considered by the director in determining good cause for authorizing a change of wholesalers will include:

(i) A wholesaler's bankruptcy or serious financial instability, including its consistent failure to pay its debts as they fall due or its failure to meet or maintain any objective standards of capitalization expressly agreed to between the wholesaler and the distiller, manufacturer, importer, or producer, provided such standards are determined by the director to be commercially reasonable;

(ii) A wholesaler's repeated violations of any provision of federal or state law or regulations, whether or not such violations resulted in official action;

(iii) A wholesaler's failure to maintain reasonable sales volume of the brand, taking into consideration such factors as the extent of the distiller's, manufacturer's, importer's, or producer's advertising and promotion of the particular brand, prevailing economic conditions affecting sales generally, or the extent of the wholesaler's efforts, or lack thereof, to promote a particular brand; and

(iv) Any other factors relevant to such proposed change and which aid the director in determining good cause.

History. Acts 1991, No. 260, § 3.

3-2-405. Request to change wholesalers — Notice — Objections — Hearing — Disposition of proceedings.

(a)(1) At the same time that the original wholesaler change request is filed with the Director of the Alcoholic Beverage Control Division, a copy thereof shall be mailed by the distiller, manufacturer, importer, or producer to each wholesaler who may be affected by the proposed changes. Immediately upon receipt of any wholesaler change request, the director shall notify the currently designated wholesaler of the request by certified mail.

(2) Within fifteen (15) days after receipt of such notice by the affected wholesaler, any such wholesaler or party required to be given notice by

this subchapter may interpose written objections thereto. Such written objections shall be filed in the office of the Alcoholic Beverage Control Division, and copies thereof shall be served by the objecting party upon the party proposing the change and upon all wholesalers who may be affected by the proposed change.

(b) Upon the receipt of an objection from any party, or upon his own motion, the director shall hold a hearing, after providing due notice to all parties concerned, for the purpose of determining the truth of any matters of fact alleged by any party and determining whether the proposed changes are based upon sufficient cause and are otherwise consistent with the policies set out in § 3-2-401. If it is determined from the evidence educed at said hearing that the brand or label involved is the same as, or similar to, or is such a modification of, substitution of, upgrade of, or extension of a brand or label which has already been registered by the distiller, manufacturer, importer, or producer, so as to render it unjust or inequitable, without cause being shown, to designate the brand or label to a wholesaler different from the wholesaler designated for the brand or label being so modified, substituted, upgraded, or extended, then such request shall be denied; provided, however, that nothing herein shall be construed or prevent the distiller, manufacturer, importer, or producer from treating the matter as a desire to change wholesalers and from proceeding under the provisions of § 3-2-404, either before or after such determination.

(c) No proposed change will be approved by the director which is based upon the failure or refusal of a wholesaler to comply with any demand or request of a distiller, manufacturer, importer, or producer if such demand or request would result in a violation of any provision of federal or state law or regulation. During such fifteen-day objection period or until the proposed changes have been finally approved by the director, the party proposing the change shall continue to supply the designated wholesaler, upon commercially reasonable terms, such reasonable quantities of the brand involved as the wholesaler may require. If, at any time, the director finds a distiller, manufacturer, importer, or producer is not shipping the wholesaler a reasonable amount of merchandise, he or she may withdraw approval of all brands registered by such parties within the state.

History. Acts 1991, No. 260, § 4.

3-2-406. Request to change wholesalers — Hearing — Time — Findings — Appeal.

(a) Any hearing held by the Director of the Alcoholic Beverage Control Division pursuant to the provisions of § 3-2-405 shall be held within thirty (30) days after the receipt of any notice of objection to a wholesaler change request.

(b) The findings of the director made after such hearing shall be presented to the Alcoholic Beverage Control Board at its next regularly scheduled meeting.

(c) Any aggrieved party may appeal the decision of the director to the full board to be heard de novo and any such appeal hearing will be scheduled and held pursuant to hearing procedures established for the Alcoholic Beverage Control Division by state law and division regulations.

History. Acts 1991, No. 260, § 5.

3-2-407. Request to change wholesalers — Automatic approval.

If no objection is filed to the wholesaler change request as provided in § 3-2-406, the proposed changes shall stand automatically approved by the Director of the Alcoholic Beverage Control Division at the expiration of such fifteen-day period, conditioned upon the manufacturer's or importer's repurchasing all inventory of the subject brand from the previously designated wholesaler at such wholesaler's laid-in cost.

History. Acts 1991, No. 260, § 6.

3-2-408. Acquisition of right to sell, ship, or distribute a label.

Any distiller, manufacturer, importer, or producer who obtains or acquires in any manner the right to sell, ship, or distribute any label shall for the purpose of this subchapter stand in place of and be subject to all rights, privileges, and duties and obligations of its predecessor or its predecessors from whom such brands or labels were obtained or acquired.

History. Acts 1991, No. 260, § 7.

3-2-409. Beer, malt products, or light wine.

(a) Every manufacturer or importer of beer or other malt products or light wine doing business in the State of Arkansas shall submit to the Alcoholic Beverage Control Division one (1) label for each brand of beer or malt product or light wine to be shipped for the first time into or within the state and shall designate within the application for registration any number of wholesalers in the state, each of whom shall be the exclusive distributor of such brand within the geographical territory assigned by the manufacturer or importer to such wholesaler.

(b) Transfers of brands of malt products or light wine or changes in geographical distribution areas assigned shall not be subject to the provisions set out above for spirituous or vinous products so long as any such manufacturer or importer has complied with the filing provisions of applicable law.

History. Acts 1991, No. 260, § 8.

3-2-410. Terms and conditions of agreements with wholesaler binding on successor.

A successor to a distiller, manufacturer, importer, producer, winery, or brewer of beer, malt liquor, light wine, wine, or liquor that continues in business as a distiller, manufacturer, importer, producer, winery, or brewery or that continues to operate under the names of any product acquired by said distiller, manufacturer, importer, producer, winery, or brewer shall be bound by all terms and conditions of any agreements with any Arkansas wholesaler, whether oral or written, of the distiller, manufacturer, importer, producer, winery, or brewery which are in effect on the date of succession.

History. Acts 1991, No. 260, § 10.

3-2-411. Subchapter incorporated into division approvals — Applicability — Waiver.

(a) The terms, conditions, and requirements of this subchapter are hereby expressly made a part of the terms of and as conditions to the approval granted by the Alcoholic Beverage Control Division to distillers, manufacturers, importers, or producers to do business in the state and by the application for, the acceptance of, or the conduct of business under any such approval, a distiller, manufacturer, importer, or producer consents and agrees to comply with the terms, conditions, and requirements of this subchapter.

(b) This subchapter does not apply to manufacturers or wholesalers of small farm winery wines. For the purpose of this section, “small farm winery” has the same meaning as defined by § 3-5-1601.

(c) No right, duty, or other provision set out in this subchapter may be waived by any agreement or contract between any wholesaler and supplier regardless of whether any such waiver agreement was made prior to or after July 15, 1991.

History. Acts 1991, No. 260, §§ 12, 13; 2007, No. 668, § 2.

in (b), substituted “small farm winery wines” for Arkansas native wine” and

Amendments. The 2007 amendment, added the last sentence.

3-2-412. Dual distributorship prohibited.

(a)(1) The creation of a dual distributorship is prohibited.

(2) An unlawful dual distributorship is created whenever any manufacturer designates as its distributor more than one (1) Arkansas liquor wholesaler in the state or wholesale beer permit holder to distribute the same brand of alcoholic beverage in the same geographical territory, whether a city, a county, counties, or the state.

(b) In addition to any remedies to any aggrieved party authorized by law, the Director of the Alcoholic Beverage Control Division may withdraw approval of any and all brands registered by any manufacturer found to be in violation of this subchapter, such findings to be made after a hearing pursuant to hearing procedures established for

the Alcoholic Beverage Control Division by state law and administrative regulations.

(c)(1) For the purposes of this subchapter, a "brand" means the same product or substantially the same product as evidenced by the product label that must be filed with the division.

(2) Identical or substantially identical labels will be considered and treated as the same brand.

History. Acts 1991, No. 260, § 9.

CHAPTER 3

PROHIBITED PRACTICES

SUBCHAPTER

1. GENERAL PROVISIONS.
2. PARTICULAR PRACTICES PROHIBITED.
3. DRY TERRITORIES.
4. ILLICIT MANUFACTURE AND EQUIPMENT.

RESEARCH REFERENCES

A.L.R. Choice of law as to liability of seller for injuries caused by intoxicated person. 2 A.L.R.4th 952.

Statutes, ordinances, or regulations prohibiting or regulating advertising of intoxicating liquors. 20 A.L.R.4th 600.

Prohibition of sale of intoxicating liquors on specific religious holidays. 27 A.L.R.4th 1155.

Statute or ordinance making it offense

to have possession of open or unsealed alcoholic beverage in public place. 39 A.L.R.4th 668.

Intoxicating liquors: products liability. 42 A.L.R.4th 253.

Tavernkeeper's liability to patron for third person's assault. 43 A.L.R.4th 281.

Am. Jur. 45 Am. Jur. 2d, Intox. L., § 232 et seq.

C.J.S. 48 C.J.S., Intox. L., § 237 et seq.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

3-3-101. Accessories guilty as principals.

3-3-102. Sentences and fines.

SECTION.

3-3-103. Multiple offenses — Bonds for good behavior.

Effective Dates. Acts 1935, No. 108, Art. 10: approved Mar. 16, 1935. Emergency clause provided: "Whereas, the repeal of the Eighteenth Amendment to the Constitution of the United States has created an emergency which requires immediate control of intoxicating liquors; and

"Whereas, the present state revenue does not meet the needs for the maintenance and development of the State Government and its agencies and the state's credit is threatened with impairment, an emergency is declared to exist and this act shall become a law and be effective on its passage and approval or nonaction by the Governor."

nance and development of the State Government and its agencies and the state's credit is threatened with impairment, an emergency is declared to exist and this act shall become a law and be effective on its passage and approval or nonaction by the Governor."

3-3-101. Accessories guilty as principals.

Every person knowingly aiding or abetting any person, firm, or corporation in the violation of any section of this act shall be deemed a principal and punished as such.

History. Acts 1935, No. 108, Art. 6, § 4; Pope's Dig., § 14137; A.S.A. 1947, § 48-939.

Meaning of "this act". Acts 1935, No. 108, codified as §§ 3-1-101 — 3-1-103, 3-2-101, 3-2-205, 3-3-101 — 3-3-103, 3-3-212, 3-3-401, 3-3-404, 3-3-405, 3-4-101 —

3-4-103, 3-4-201, 3-4-202, 3-4-207 — 3-4-211, 3-4-213, 3-4-214, 3-4-215 [repealed], 3-4-217, 3-4-219, 3-4-220, 3-4-301 — 3-4-303, 3-4-501, 3-4-503, 3-4-601 — 3-4-605, 3-8-301 — 3-8-311, 3-8-313 — 3-8-317, 23-12-708.

3-3-102. Sentences and fines.

(a) When a jail sentence is inflicted as part of the punishment, all persons convicted under this act shall serve out the sentence at hard labor.

(b) All fines and costs assessed against any person under this act and not paid or replevied shall be served out by confinement at hard labor at the rate of one (1) day for each one dollar (\$1.00) of the fine and costs.

History. Acts 1935, No. 108, Art. 6, § 6; Pope's Dig., § 14139; A.S.A. 1947, § 48-941.

Meaning of "this act". See note to § 3-3-101.

3-3-103. Multiple offenses — Bonds for good behavior.

(a) Upon a second or any subsequent conviction or bond forfeiture for any violation of any alcoholic beverage control law of this state pertaining to the control, regulation, and handling of spirituous, vinous, malt liquors or beverages, or any amendment to any existing law or any new law on the same subject hereafter enacted, it shall be the duty of the court convicting the person for a second time, or forfeiting a bond for a second time, or forfeiting a bond or convicting a person after a previous conviction or bond forfeiture for such an offense, to require the defendant to execute bond in the sum of two hundred dollars (\$200), after a hearing thereon, to be of good behavior for a period of twelve (12) months insofar as the laws of the State of Arkansas on spirituous, vinous, or malt liquors or beverages affect him.

(b) Should any person violate the provisions of the bond, the bond, after a hearing thereon, shall be forfeited. The person shall be, for all subsequent violations of the liquor laws or bond forfeitures, placed under a five hundred dollar (\$500) bond of the same provisions, to ensure good behavior from the violation of the liquor laws.

(c) If the bonds provided in this section are not given by the defendant, the defendant shall be committed to the county jail for a period not less than thirty (30) days nor more than six (6) months, to be fixed by the court.

(d) The order of the court requiring the execution of a bond as provided in this section shall be for the preservation of the laws and

shall not be considered a part of the punishment inflicted, but as a security against future violations of the provisions of all alcoholic beverage control laws.

History. Acts 1935, No. 108, Art. 6, § 8; Pope's Dig., § 14141; Acts 1949, No. 143, §§ 1-4; A.S.A. 1947, §§ 48-942 — 48-942.3.

Publisher's Notes. Section 3-8-314 also requires bonds for multiple offenders.

Cross References. Vinous, spirituous, and malt liquors defined, § 3-1-102.

SUBCHAPTER 2 — PARTICULAR PRACTICES PROHIBITED

SECTION.

- 3-3-201. Unknowingly furnishing or selling to minor.
- 3-3-202. Knowingly furnishing or selling to minor.
- 3-3-203. Purchase or possession by minor.
- 3-3-204. Handling by minor.
- 3-3-205. Sale or possession without license.
- 3-3-206. Sale or delivery to retailer without valid license tax receipt.
- 3-3-207. [Repealed.]
- 3-3-208. Possession or procuring orders.
- 3-3-209. Furnishing to alcoholics or intoxicated persons.
- 3-3-210. Sale on Sunday or early weekday mornings.

SECTION.

- 3-3-211. Sales on Christmas Day.
- 3-3-212. Manufacturer-seller relationships generally.
- 3-3-213. Manufacturer-seller relationships — Exclusivity agreements.
- 3-3-214. Sale of denatured alcohol.
- 3-3-215. Obtaining federal license without state license.
- 3-3-216. Possession or sale of untaxed liquor.
- 3-3-217. [Repealed.]
- 3-3-218. Duty of care of privilege license holders — Enforcement.

Cross References. Illegal sales, abatement of nuisance, § 16-105-201 et seq.

Permit violations, § 3-4-401 et seq.

Effective Dates. Acts 1911, No. 143, §§ 4, 5: effective on passage.

Acts 1935, No. 108, Art. 10: approved Mar. 16, 1935. Emergency clause provided: "Whereas, the repeal of the Eighteenth Amendment to the Constitution of the United States has created an emergency which requires immediate control of intoxicating liquors; and

"Whereas, the present state revenue does not meet the needs for the maintenance and development of the State Government and its agencies and the state's credit is threatened with impairment, an emergency is declared to exist and this act shall become a law and be effective on its passage and approval or nonaction by the Governor."

Acts 1941, No. 357, § 6: Mar. 26, 1941. Emergency clause provided: "Whereas, it has been ascertained that large quantities

of intoxicating liquors are being illegally manufactured and sold in the State of Arkansas and large quantities of intoxicating liquors upon which the state tax has not been paid are also being sold in the State of Arkansas and the state is losing great sums of money in the form of revenue by reason thereof, an emergency is hereby declared and this act shall be in full force and effect immediately from and after its passage and approval."

Acts 1943, No. 219, §§ 2, 3: approved Mar. 15, 1943. Emergency clause provided: "The illicit traffic in intoxicating liquor should be discouraged, and as the heavy penalties prescribed by existing law deter conviction by reason of their severity, and more moderate punishment would secure increased conviction, an emergency is declared to exist, and this act being necessary for the immediate preservation of the public peace, health, and safety, shall take effect and be in force from and after its passage and approval."

Acts 1943, No. 257, § 4: Mar. 18, 1943. Emergency clause provided: "The Legislature finds as a matter of fact that there are a great many violations of the law with respect to the sale of intoxicating liquor to minors and on Sundays, which, on account of present provisions of the law making such acts felonies, cannot in many cases be enforced; that the practice of selling intoxicating liquor to minors and on Sundays should be stopped and can best be prevented by making such acts misdemeanors.

"Therefore, an emergency is hereby declared to exist and this act shall be in full force and effect from and after its passage and approval."

Acts 1947, No. 205, § 3: became law over Governor's veto, Mar. 11, 1947.

Acts 1947, No. 206, § 2: became law over Governor's veto, Mar. 11, 1947.

Acts 1993, No. 875, § 6: Apr. 5, 1993. Emergency clause provided: "It is hereby found and determined by the Seventy-Ninth General Assembly of the State of Arkansas that the penalties under Arkansas law for knowingly and unknowingly furnishing alcoholic beverages to minors are too lenient; that supplying alcoholic beverages to underage persons is strictly contrary to the public policy and is detrimental to the young people of the State;

and that the penalties for this conduct should be increased to deter and to punish these violations of Arkansas law and policy. Therefore, in order to properly punish these violations, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 2007, No. 1017, § 4: Apr. 3, 2007. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that current laws concerning the sale of alcoholic beverages at certain large attendance facilities enact a financial hardship on those facilities; and that a revision to Arkansas law is necessary to ease those hardships and provide a more equitable system of selling alcoholic beverages on certain days and times. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

RESEARCH REFERENCES

Ark. L. Rev. Torts — Liability of Vendor to Third Parties for Injury Caused by Sale of Intoxicants, 9 Ark. L. Rev. 179.

U. Ark. Little Rock L.J. Barrier, Ren-

der Unto Caesar: An Essay on Private Morals and Public Law, 4 U. Ark. Little Rock L.J. 511.

3-3-201. Unknowingly furnishing or selling to minor.

(a) Any person who shall unknowingly sell, give away, or otherwise dispose of intoxicating liquor to a minor shall be guilty of a violation and punished by a fine of not less than two hundred dollars (\$200) nor more than five hundred dollars (\$500) for the first offense.

(b) For the second and subsequent offenses, he or she shall be guilty of a Class A misdemeanor.

History. Acts 1943, No. 257, § 1; A.S.A. 1947, § 48-902.1; Acts 1993, No. 875, § 1; 2005, No. 1994, § 332.

Publisher's Notes. The Arkansas Su-

preme Court, in *State v. Jarvis*, 244 Ark. 753, 427 S.W.2d 531 (1968), held that this section, which appears to be superseded by § 3-3-202 with respect to the offense of

knowingly furnishing alcoholic beverages to minors, is still valid with respect to the offense of unknowingly furnishing alcoholic beverages to minors.

Amendments. The 2005 amendment deleted former (a) which read: "The sale, giving away, or other disposition of intoxicating liquor to a minor is declared to be a misdemeanor"; redesignated former (b) as present (a) and (b); in present (a), inserted "unknowingly" and "guilty of a violation

and"; and, in present (b), inserted "or she" and substituted "guilty of a Class A misdemeanor" for "punished by a fine of not less than five hundred dollars (\$500) nor more than one thousand dollars (\$1,000) or by imprisonment in the county jail for not less than one (1) year, or both a fine and imprisonment in the discretion of the jury or court" from the end.

Cross References. Contributing to delinquency of minor, § 5-27-220.

CASE NOTES

ANALYSIS

Effect on Other Laws.
Knowledge Not an Element.
Negligence.

Effect on Other Laws.

There is no conflict between this section and § 3-3-202, as this section makes it a misdemeanor to unknowingly sell, give, or otherwise dispose of intoxicating liquor to a minor and § 3-3-202 makes it a misdemeanor to knowingly do so with a second or subsequent offenses constituting a felony. *State v. Jarvis*, 244 Ark. 753, 427 S.W.2d 531 (1968).

Knowledge Not an Element.

This section governs the sale of intoxicating liquor to minors where knowledge of minority is not an element. *State v. Jarvis*, 244 Ark. 753, 427 S.W.2d 531 (1968).

Negligence.

Jury should not have been told it could consider the fact that the fraternity had furnished intoxicating liquor to a minor in determining whether the fraternity was negligent. *Alpha Zeta Chapter of Pi Kappa Alpha Fraternity v. Sullivan*, 293 Ark. 576, 740 S.W.2d 127 (1987).

3-3-202. Knowingly furnishing or selling to minor.

(a)(1) It shall be unlawful for any person knowingly to give, procure, or otherwise furnish any alcoholic beverage to any person under twenty-one (21) years of age. However, this section shall not apply to the serving of such to one's family or to the use of wine in any religious ceremony or rite in any established church or religion.

(2)(A) Upon a first conviction, any person violating this subsection shall be guilty of a Class C misdemeanor.

(B) Upon a second conviction within three (3) years, a person violating this section shall be guilty of a Class D felony.

(b)(1) It shall be unlawful for any person knowingly to sell or otherwise furnish for money or other valuable consideration any alcoholic beverage to any person under twenty-one (21) years of age.

(2)(A) Upon a first conviction, any person violating this subsection shall be guilty of a Class D felony and shall be punished as provided by law.

(B) Upon a second conviction within five (5) years, a person violating this section shall be deemed guilty of a Class C felony and may be imprisoned or fined, or both as provided by law.

(c)(1) A warning notice that includes the provisions of subsections (a) and (b) of this section shall be posted in public view in each place of business where alcoholic beverages are sold.

(2) The warning notice shall be posted in a manner prescribed by the Alcoholic Beverage Control Board.

History. Acts 1967, No. 277, §§ 1, 2; A.S.A. 1947, § 48-903; Acts 1993, No. 875, § 2; 1995, No. 446, § 1; 2005, No. 1767, § 1; 2005, No. 1994, § 405.

A.C.R.C. Notes. Pursuant to § 1-2-207, this section is set out above as amended by Acts 2005, No. 1994. Subsection (a)(2) of this section was also amended by Acts 2005, No. 1767, § 1, to read as follows:

“(2)(A) Except as provided in subdivision (a)(2)(B) of this section, any person violating this subsection shall, upon a first conviction, be deemed guilty of a Class A misdemeanor and shall be fined not more than five hundred dollars (\$500) or imprisoned for not more than ten (10) days, or both fined and imprisoned. Upon a second conviction within three (3) years, a person violating this section shall be deemed guilty of a Class D felony and may be imprisoned in the Department of Correction for not less than one (1) year nor more than five (5) years and shall be fined not more than five hundred dollars (\$500), or both.

“(B) Any person violating the provisions of subdivision (a)(1) of this section shall be subject to enhanced penalties if consumption of the alcoholic beverage furnished to the person under twenty-one

(21) years of age proximately caused a motor vehicle accident, as follows:

“(i) Upon conviction of the person that furnished the alcoholic beverage, if property damage resulting from the motor vehicle accident exceeds five hundred dollars (\$500), the classification and penalty range of the offense shall be increased by one (1) classification; or

“(ii) Upon conviction of the person that furnished the alcoholic beverage, if death results from the motor vehicle accident, the classification and penalty range of the offense shall be increased by two (2) classifications.”

Amendments. The 2005 amendment substituted “Class C misdemeanor” for “misdemeanor and shall be fined not more than five hundred dollars (\$500) or imprisoned for not more than ten (10) days, or both fined and imprisoned” in (a)(2)(A); and substituted “Class D felony” for “felony and may be imprisoned in the Department of Corrections for not less than one (1) year nor more than five (5) years and shall be fined not more than five hundred dollars (\$500), or both” in (a)(2)(B).

Cross References. Sales of beer or wine to minors by beer permittees prohibited, §§ 3-5-221, 3-5-307.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2005 Arkansas General As-

sembly, Alcoholic Beverages, 28 U. Ark. Little Rock L. Rev. 319.

CASE NOTES

ANALYSIS

Civil Liability.

Effect on Other Laws.

Civil Liability.

This section and §§ 3-4-803 and 3-3-218 create a duty for licensees to exercise a high standard of care for the protection of minors, and a breach of this duty can lead to a suit for negligence. *Shannon v. Wilson*, 329 Ark. 143, 947 S.W.2d 349 (1997).

Effect on Other Laws.

There is no conflict between this section and § 3-3-201, as that section makes it a misdemeanor to unknowingly sell, give, or otherwise dispose of intoxicating liquor to a minor and this section makes it a misdemeanor to knowingly do so with a second or subsequent offenses constituting a felony. *State v. Jarvis*, 244 Ark. 753, 427 S.W.2d 531 (1968).

Cited: *Anable v. Ford*, 653 F. Supp. 22

(W.D. Ark. 1985); Branscumb v. Freeman, 360 Ark. 171, 200 S.W.3d 411 (2004).

3-3-203. Purchase or possession by minor.

(a)(1) It shall be unlawful for any person under twenty-one (21) years of age to purchase or have in his or her possession any intoxicating liquor, wine, or beer.

(2) For the purposes of this section, intoxicating liquor, wine, or beer in the body of a minor shall not be deemed to be in his or her possession.

(b) It shall also be unlawful for any adult to purchase on behalf of a person under twenty-one (21) years of age any intoxicating liquor, wine, or beer.

(c) Any person violating this section is guilty of a violation and upon conviction shall be subject to a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500).

(d) In addition to the penalties provided in this section, the trial judge or magistrate may impose the following penalty or penalties or any combination thereof:

(1) Require a person under twenty-one (21) years of age to write themes or essays on intoxicating liquors, wine, or beer; and

(2) Place a person under twenty-one (21) years of age under probationary conditions as determined by the court in its reasonable discretion designed as a reasonable and suitable preventive and educational safeguard to prevent future violations of this section by the person.

(e)(1) In addition to the fine authorized by subsection (c) of this section, at the time of arrest for violation of the provisions of subsection (a) of this section, the arrested person shall immediately surrender his or her license, permit, or other evidence of driving privilege to the arresting law enforcement officer as provided in § 5-65-402.

(2)(A) The Office of Driver Services or its designated official shall suspend or revoke the driving privilege of the arrested person or shall suspend any nonresident driving privilege of the arrested person, as provided in § 5-65-402.

(B) The period of suspension or revocation shall be based on the offense that caused the surrender of the arrested person's license, permit, or other evidence of driving privilege as described in subdivision (e)(1) of this section and the number of any previous offenses as follows:

(i) Suspension for sixty (60) days for a first offense under subsection (a) of this section;

(ii) Suspension for one hundred twenty (120) days for a second offense under subsection (a) of this section; and

(iii) Suspension for one (1) year for a third or subsequent offense under subsection (a) of this section.

(3) In order to determine the number of previous offenses to consider when suspending or revoking the arrested person's driving privileges, the office shall consider as a previous offense any conviction under subsection (a) of this section which occurred either prior to or after the effective date of this subsection.

History. Acts 1967, No. 44, § 1; 1979, No. 61, § 1; A.S.A. 1947, § 48-903.1; Acts 1997, No. 1210, § 1; 2005, No. 1535, § 1; 2005, No. 1994, § 28.

Amendments. The 2005 amendment by No. 1535 added present (e).

The 2005 amendment by No. 1994 substituted "violation" for "misdemeanor" in (c); and added "and" at the end of (d)(1).

CASE NOTES

ANALYSIS

Constitutionality.
Construction.
Applicability.
Juvenile Code.
Possession.

Constitutionality.

This section is rational and, consequently, not unconstitutional. *Manatt v. State*, 311 Ark. 17, 842 S.W.2d 845 (1992), cert. denied, 507 U.S. 1005, 113 S. Ct. 1647, 123 L. Ed. 2d 268 (1993).

Construction.

The exemption in subdivision (a)(2) of this section that intoxicating liquor, wine, or beer in the body of a minor shall not be deemed to be in his possession is not contained within the controlled substances statutes. *Embry v. State*, 50 Ark. App. 245, 905 S.W.2d 73 (1995).

Applicability.

An adult cannot be convicted of the offense of possession of intoxicating liquor

by a minor. *Manatt v. State*, 311 Ark. 17, 842 S.W.2d 845 (1992), cert. denied, 507 U.S. 1005, 113 S. Ct. 1647, 123 L. Ed. 2d 268 (1993).

Juvenile Code.

A violation under this section does not constitute a violation under the Juvenile Code. *Manatt v. State*, 311 Ark. 17, 842 S.W.2d 845 (1992), cert. denied, 507 U.S. 1005, 113 S. Ct. 1647, 123 L. Ed. 2d 268 (1993).

Possession.

Where defendant was not in actual possession of intoxicating beverages, evidence that there were beer cans inside the vehicle, that beer was found in the immediate proximity of the defendant in the vehicle, and that there was the smell of beer on the defendant's person was not sufficient evidence of constructive possession. *Kastl v. State*, 303 Ark. 358, 796 S.W.2d 848 (1990).

Cited: *Rendezvous Club v. State*, 247 Ark. 670, 447 S.W.2d 842 (1969); *Anable v. Ford*, 653 F. Supp. 22 (W.D. Ark. 1985).

3-3-204. Handling by minor.

(a) Except as provided in subsection (b) or (c) of this section, it shall be unlawful for any wholesaler, retailer, or transporter of alcoholic beverages to allow any employee or any other person under twenty-one (21) years of age to have anything to do with the selling, transporting, or handling of alcoholic beverages.

(b) With the written consent of a parent or guardian, persons eighteen (18) years of age and older may:

(1) Sell or otherwise handle beer and cooking wines at retail grocery establishments; or

(2) Be employed by a licensed liquor wholesaler or licensed beer wholesaler or by a licensed native winery to handle alcoholic beverages at the place of business of the licensed wholesaler or winery.

(c) With the written consent of a parent or guardian, persons nineteen (19) years of age and older may sell and handle alcoholic beverages at an establishment that is licensed for on-premises consumption of alcoholic beverages under § 3-9-202(8) and (9), § 3-9-301, or § 3-9-501.

(d)(1) Anyone violating the provisions of this section shall be guilty of a violation and upon conviction shall be fined not less than ten dollars (\$10.00) nor more than one hundred dollars (\$100).

(2) The violation shall be grounds for suspension, cancellation, or revocation by the Director of the Alcoholic Beverage Control Division of any permit issued to the person by the director.

History. Acts 1969, No. 129, §§ 1, 2; 1983, No. 527, § 1; A.S.A. 1947, §§ 48-903.2, 48-903.3; Acts 1987, No. 515, § 1; 1999, No. 1169, § 1; 2001, No. 1553, § 3; 2003, No. 1807, § 1; 2005, No. 1994, § 28.

Amendments. The 2005 amendment

substituted "violation" for "misdemeanor" in (d)(1).

Cross References. Revocation and suspension procedure generally, §§ 3-2-212 — 3-2-217.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2003 Arkansas General As-

sembly, Alcoholic Beverages, 26 U. Ark. Little Rock L. Rev. 349.

3-3-205. Sale or possession without license.

(a)(1) Any person who shall sell, barter, exchange, or give any intoxicating alcoholic liquor without having a valid license as provided by this act, in addition to losing his or her license, shall be guilty of a Class A misdemeanor.

(2) Any person found guilty of a third or subsequent violation of this subsection within a period of three (3) years shall be guilty of a Class D felony.

(b) Any person who has in his or her possession intoxicating alcoholic liquor not obtained under and in conformity with the provisions of this act shall be deemed guilty of a Class A misdemeanor.

(c) This penalty shall apply whether the intoxicating liquor is for the use of the person illegally possessing it or for the use and benefit of another.

(d) Each act in violation of this section shall constitute a separate misdemeanor.

(e) Nothing contained in this section shall relieve any licensee from forfeiture of his or her license.

History. Acts 1943, No. 218, §§ 2-4; 1947, No. 205, §§ 1, 2; A.S.A. 1947, §§ 48-902, 48-912, 48-913; Acts 1991, No. 498, § 1; 1991, No. 577, § 1; 2005, No. 1994, § 436.

A.C.R.C. Notes. Because of the irreconcilable conflict between Acts 1991, Nos. 498 and 577, both versions of § 3-3-205 (f) have been set out.

Amendments. The 2005 amendment redesignated former (a) as present (a)(1); inserted "or her" in present (a)(1), (b) and (e); deleted "and upon conviction shall be fined not less than five hundred dollars

(\$500) nor more than one thousand dollars (\$1000), or imprisoned for not exceeding one (1) year, or both so fined and imprisoned in the discretion of the court or jury" from the end of present (a)(1); added (a)(2); deleted "and shall, upon conviction, be fined not less than five hundred dollars (\$500) nor more than one thousand dollars (\$1000) or imprisoned for not exceeding one (1) year, or both so fined and imprisoned in the discretion of the court or jury" from the end of (b); and deleted former (f).

Meaning of "this act". Acts 1943, No.

218, §§ 1, 3, and 4 repealed Acts 1941, No. 356, §§ 1, 3, and 4 and enacted provisions identical to Acts 1935, No. 108, Art. 6, §§ 1, 12, and 13 which had been repealed by Acts 1941, No. 356. Further, Acts 1943, No. 218, § 2 repealed Acts 1941, No. 356, § 2 and enacted provisions substantially the same as the first paragraph of Acts 1935, No. 108, Art. 6, § 2, except that the penalty provisions were reduced from a range of five hundred dollars to one thousand dollars to a range of fifty dollars to five hundred dollars.

Therefore, as used in this section "this

act" probably means Acts 1935, No. 108, which is codified as §§ 3-1-101 — 3-1-103, 3-2-101, 3-2-205, 3-3-101 — 3-3-103, 3-3-212, 3-3-401, 3-3-404, 3-3-405, 3-4-101 — 3-4-103, 3-4-201, 3-4-202, 3-4-207 — 3-4-211, 3-4-213, 3-4-214, 3-4-215 [repealed], 3-4-217, 3-4-219, 3-4-220, 3-4-301 — 3-4-303, 3-4-501, 3-4-503, 3-4-601 — 3-4-605, 3-8-301 — 3-8-311, 3-8-313 — 3-8-317, 23-12-708.

Cross References. Misdemeanors, § 5-1-107.

Sale, etc., in dry territory, § 3-8-312.

Sale of beer without permit, § 3-5-210.

CASE NOTES

ANALYSIS

Appeal.

Habeas Corpus.

Possession of Untaxed Liquor.

Sentence.

Appeal.

On appeal from conviction for possessing illegal liquor, evidence must be viewed in the light most favorable to the state. *Marshall v. State*, 205 Ark. 349, 168 S.W.2d 809 (1943).

Habeas Corpus.

Writ of habeas corpus was not the proper remedy where prisoner was convicted under this section for selling liquor in a dry territory covered by § 3-8-209, since proper remedy was by appeal. *Goodman v. Storey*, 221 Ark. 308, 254 S.W.2d 63 (1952).

Possession of Untaxed Liquor.

In prosecution for possession of untaxed liquor, allegation in the information that defendant was in possession of liquor upon which the state tax had not been paid was sufficient. *Burrell v. State*, 203

Ark. 1124, 160 S.W.2d 218 (1942) (decision under prior law).

In prosecution for possession of untaxed intoxicating liquor, evidence of prior conviction on similar charge was admissible. *Burrell v. State*, 203 Ark. 1124, 160 S.W.2d 218 (1942) (decision under prior law).

For conviction under this section it is immaterial whether liquor obtained is liquor legally manufactured outside of state or liquor illegally manufactured within the state, if in fact the excise tax is not paid on the liquor. *McHenry v. State*, 219 Ark. 401, 242 S.W.2d 707 (1951).

Maximum sentence for possession of two pints of untaxed wine was not excessive. *McHenry v. State*, 219 Ark. 401, 242 S.W.2d 707 (1951).

Sentence.

Imposition of fine and imprisonment was erroneous where language of indictment indicated offense was for selling liquor in dry territory instead of selling liquor without a license, hence defendant was subject only to a fine. *Robbins v. State*, 219 Ark. 664, 244 S.W.2d 156 (1951).

Cited: *Middleton v. State*, 311 Ark. 307, 842 S.W.2d 434 (1992).

3-3-206. Sale or delivery to retailer without valid license tax receipt.

(a) Any manufacturer or jobber who shall sell or deliver intoxicating liquor within the state to a retailer who does not possess a valid license tax receipt, as provided for in this act, shall be guilty of a misdemeanor.

(b)(1) For the first offense, he or she shall be guilty of a Class B misdemeanor.

(2) Any person found guilty a second time shall be guilty of a Class A misdemeanor.

History. Acts 1943, No. 218, §§ 1, 2; A.S.A. 1947, §§ 48-901, 48-902; Acts 2005, No. 1994, § 462.

Amendments. The 2005 amendment, in (a), inserted "or she," substituted "guilty of a Class B misdemeanor" for "fined not less than two hundred fifty dollars (\$250) nor more than one thousand dollars (\$1,000) or imprisoned not less than thirty (30) days nor more than six (6) months, or both so fined and imprisoned within the discretion of the court

or jury" at the end of the second sentence, and deleted the former last sentence; and substituted "guilty of a Class A misdemeanor" for "fined not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500) or confined in the county jail not less than one (1) month nor more than six (6) months, or both so fined and imprisoned within the discretion of the court or jury" at the end of (b).

Meaning of "this act". See note to § 3-3-205.

CASE NOTES

Intoxicating Liquor.

Beer containing 5% alcohol is an intoxicating liquor within the meaning of this section; *Wald v. State ex rel. Robinson*, 196 Ark. 1180, 111 S.W.2d 553 (1937) (decision under prior law).

Cited: *Bryant v. State*, 246 Ark. 872, 440 S.W.2d 534 (1969); *Alpha Zeta Chapter of Pi Kappa Alpha Fraternity v. Sullivan*, 293 Ark. 576, 740 S.W.2d 127 (1987).

3-3-207. [Repealed.]

A.C.R.C. Notes. The amendment to this section by Acts 2005, No. 1994, § 366, was superseded by the repeal of this section by Acts 2005, No. 541, § 1. As amended by Acts 2005, No. 1994, § 366, this section read: "3-3-207. Sales to persons failing to provide for families.

"(a) Any person who shall sell intoxicating alcoholic liquor to any person who has been reported to the seller, by the juvenile court or any officer acting by its discretion, as failing to make a proper provision for his or her family shall be

guilty of a Class C misdemeanor. The penalties prescribed herein shall be in addition to any other penalty prescribed by law.

"(b) Any person found guilty a second time shall be guilty of a Class B misdemeanor."

Publisher's Notes. This section, concerning sales of alcohol to persons failing to provide for families, was repealed by Acts 2005, No. 541, § 1. The section was derived from Acts 1943, No. 218, §§ 1, 2; A.S.A. 1947, §§ 48-901, 48-902.

3-3-208. Possession or procuring orders.

(a) Any person who, by himself, herself, his or her employee, servant, agent for himself or herself, or any other person, shall keep or carry on his or her person or in any vehicle or leave in a place for another to secure any intoxicating alcoholic liquor with the intent to sell the liquor in violation of this act or who shall within this state in any manner, directly or indirectly, solicit, take, or accept any order for the purchase, sale, shipment, or delivery of intoxicating liquor for beverage purposes in violation of the requirements of this act shall be guilty of a violation.

(b)(1) He or she shall be fined not less than two hundred fifty dollars (\$250) nor more than five hundred dollars (\$500) for the first offense.

(2) For the second and subsequent offenses, he or she shall be guilty of a Class A misdemeanor.

(c) The penalties prescribed herein shall be in addition to any other penalty prescribed by law.

History. Acts 1943, No. 218, § 1; A.S.A. 1947, § 48-901; Acts 2005, No. 1994, § 210.

Amendments. The 2005 amendment substituted "violation" for "misdemeanor" at the end of (a); substituted "Class A misdemeanor" for "misdemeanor" and shall be subject to a fine of not less than two hundred fifty dollars (\$250) nor more

than one thousand dollars (\$1,000), or to imprisonment in the county jail for not less than thirty (30) days nor more than one (1) year, or subject to both fine and imprisonment in the discretion of the court or jury" in (b)(2); and made gender neutral changes throughout.

Meaning of "this act". See note to § 3-3-205.

CASE NOTES

ANALYSIS

Amount of Liquor.
Double Jeopardy.
Dry Territories.
Evidence.
Instructions.
Intoxicating Liquor.
Multiple Charges.

Amount of Liquor.

Section 3-3-306 making it unlawful to possess more than one gallon of intoxicating liquor in dry territory does not apply to prosecution for possession of intoxicating liquor for the purpose of sale in a dry territory, and the state in a prosecution does not have to prove that defendant had more than one gallon in his possession, as defendant violates the law if he has any liquor in his possession for sale in a dry territory. *Jaynes v. State*, 212 Ark. 410, 206 S.W.2d 7 (1947); *Freeman v. State*, 214 Ark. 359, 216 S.W.2d 864 (1949).

Double Jeopardy.

Defendant who pleaded guilty and paid a fine for possession of more than one gallon of liquor in dry territory under § 3-3-306 would not be subjected to double jeopardy if prosecuted for possession for sale of same liquor under this section since the laws of Arkansas have created two separate offenses out of same transaction. *Eoff v. State*, 218 Ark. 109, 234 S.W.2d 521 (1950).

Dry Territories.

Club headquarters of veterans' organization was within the meaning of "a place

for another to secure" so that upon a showing that beer was sold in a stipulated "dry territory," the post commander was guilty of possession for purpose of sale in violation of law. *Joy v. State*, 211 Ark. 185, 199 S.W.2d 745 (1947).

A fine authorized by statute was upheld when the charge was possession of intoxicating liquors with intent to sell in a dry area, and an instruction concerning the application of the statute was not erroneous. *Harris v. City of Harrison*, 211 Ark. 889, 204 S.W.2d 167 (1947).

The keeping of intoxicating liquors for sale in a territory wherein the sale thereof is forbidden is a violation. *Hale v. Jones*, 212 Ark. 437, 206 S.W.2d 17 (1947).

Evidence.

In prosecution for illegal sale and possession of liquor for sale, testimony as to other occasions when premises of defendant had been raided and liquor found was admissible to show the nature of the business in which he was engaged. *Craig v. State*, 204 Ark. 798, 164 S.W.2d 1007 (1942).

Evidence of police chief as to seeing people secure liquor from defendant was sufficient to sustain a conviction for possession of intoxicating liquor for sale without a license. *Gray v. State*, 212 Ark. 1023, 208 S.W.2d 988 (1948).

Where defendant was being prosecuted for violation of this section, testimony of law enforcement officers that defendant had the reputation of being a bootlegger in that community on the date of the alleged offense, was permitted under § 3-3-405. *Eoff v. State*, 218 Ark. 109, 234 S.W.2d 521 (1950).

The evidence was sufficient to sustain conviction for unlawful possession of intoxicating liquor for sale. *Eoff v. State*, 218 Ark. 109, 234 S.W.2d 521 (1950).

Evidence was legally sufficient to go to the jury on the question as to whether defendant illegally possessed liquor for the purpose of sale in a dry county. *Blankenship v. State*, 226 Ark. 729, 293 S.W.2d 702 (1956).

Instructions.

Instruction not limiting the findings of the jury to particular offense charged but authorizing verdict of guilty upon finding that defendant at any time within one year preceding the filing of the information had possession of liquor for purpose of sale was not reversible error where defendant did not ask for instruction limiting consideration of the jury to specific instance, nor instruction limiting scope of evidence of other similar offenses. *Craig v.*

State, 204 Ark. 798, 164 S.W.2d 1007 (1942) (decision under prior law).

Intoxicating Liquor.

Beer containing 5% alcohol is an intoxicating liquor within the meaning of this section. *Wald v. State ex rel. Robinson*, 196 Ark. 1180, 111 S.W.2d 553 (1937) (decision under prior law).

Multiple Charges.

Where defendant was arrested while carrying a bucket containing several bottles of corn whiskey, he could properly be charged and convicted for (1) possessing intoxicants for the purpose of sale, and (2) possessing untaxed liquor even though both offenses grew out of the same transaction. *Miller v. State*, 222 Ark. 476, 261 S.W.2d 411 (1953).

Cited: *Bryant v. State*, 246 Ark. 872, 440 S.W.2d 534 (1969); *Alpha Zeta Chapter of Pi Kappa Alpha Fraternity v. Sullivan*, 293 Ark. 576, 740 S.W.2d 127 (1987).

3-3-209. Furnishing to alcoholics or intoxicated persons.

Any person who shall sell, give away, or dispose of intoxicating liquor to an habitual drunkard or an intoxicated person shall be guilty of a violation and for the first offense be punishable by a fine of not less than one hundred dollars (\$100) nor more than two hundred fifty dollars (\$250). For the second and subsequent offenses, he or she shall be guilty of a Class A misdemeanor. The penalties prescribed in this section shall be in addition to any other penalty prescribed by law.

History. Acts 1943, No. 218, § 1; A.S.A. 1947, § 48-901; Acts 2005, No. 1994, § 333.

Amendments. The 2005 amendment substituted "violation" for "misdemeanor" in the first sentence; and in the second sentence, inserted "or she" and "Class A" and deleted "and punishable by a fine of not less than two hundred fifty dollars

(\$250) nor more than five hundred dollars (\$500) or by imprisonment in the county jail for not less than six (6) months nor more than one (1) year, or both so fined and imprisoned in the discretion of the court or jury" from the end.

Meaning of "this act". See note to § 3-3-205.

CASE NOTES

ANALYSIS

Civil Liability.
Habitual Drunkards.
Intoxicating Liquor.

Civil Liability.

This section is not a dramshop act; therefore, the trial court did not err in ruling that as a matter of law there was no

proximate cause between violation of this section prohibiting the sale of beer to a minor and the accident which occurred when a minor lost control of his vehicle while opening a bottle of beer. *Milligan v. County Line Liquor, Inc.*, 289 Ark. 129, 709 S.W.2d 409 (1986), overruled, *Shannon v. Wilson*, 329 Ark. 143, 947 S.W.2d 349 (1997). But see *Shannon v. Wilson*, 329 Ark. 143, 947 S.W.2d 349 (1997).

This section and § 3-3-218 establish a high duty of care on the part of holders of alcohol licenses, which includes the duty not to sell alcohol to high-risk groups, including intoxicated persons, and evidence of the sale of alcohol by a licensed vendor to an intoxicated person is some evidence of negligence. *Jackson v. Cadillac Club, Inc.*, 337 Ark. 24, 986 S.W.2d 410 (1999).

Habitual Drunkards.

The sale of beer to habitual drunkards is a violation of this section. *Wald v. State ex rel. Robinson*, 196 Ark. 1180, 111 S.W.2d 553 (1937).

Intoxicating Liquor.

Section 3-1-102 does not define the term

“intoxicating liquors” as it appears in this section. *Digiacoimo v. State*, 194 Ark. 24, 105 S.W.2d 78 (1937) (decision under prior law).

Beer containing 5% alcohol is an intoxicating liquor within the meaning of this section. *Wald v. State ex rel. Robinson*, 196 Ark. 1180, 111 S.W.2d 553 (1937) (decision under prior law).

Cited: *Bryant v. State*, 246 Ark. 872, 440 S.W.2d 534 (1969); *Alpha Zeta Chapter of Pi Kappa Alpha Fraternity v. Sullivan*, 293 Ark. 576, 740 S.W.2d 127 (1987); *Young v. Gastro-Intestinal Ctr., Inc.*, 361 Ark. 209, 205 S.W.3d 741 (2005).

3-3-210. Sale on Sunday or early weekday mornings.

(a)(1) Any person who shall sell intoxicating alcoholic liquor on Sunday, except as such sales are authorized by §§ 3-9-215, 3-9-216, and 3-9-401 et seq., or between 1:00 a.m. and 7:00 a.m. on weekdays shall be guilty of a violation and for the first offense be punished by a fine of not less than one hundred dollars (\$100) nor more than two hundred fifty dollars (\$250).

(2) For the second and subsequent offenses, the person shall be guilty of a Class B misdemeanor.

(b)(1)(A) As a further exception to the Sunday sales prohibition set out in subsection (a) of this section, counties and cities in the state in which the sale of alcoholic beverages is authorized by the adoption of an ordinance by the county quorum court or city board or other governing body may refer to the voters at an election the issue of whether to authorize the sale of alcoholic beverages on Sundays between the hours of 12:00 noon and 10:00 p.m. or within a lesser period within such hours as may be provided in the ordinance.

(B) The Sunday sale of alcoholic beverages as authorized in this subsection shall be limited to those businesses within the county or city that possess a current and valid license for the sale of alcoholic beverages issued by the Alcoholic Beverage Control Division.

(2)(A) The election shall be conducted on a citywide or countywide basis.

(B) All qualified electors within the city or county, as the case may be, shall be eligible to vote even though they may reside in a dry area thereof.

(C) The election on the Sunday sales question shall be held in accordance with the procedures established for on-premises consumption elections by § 3-9-201 et seq., and the ballot for such election shall be printed substantially as follows:

“() FOR THE SALE OF ALCOHOLIC BEVERAGES ON SUNDAY IN (NAME OF CITY OR COUNTY), ARKANSAS, AS AUTHORIZED BY LAW.

() AGAINST THE SALE OF ALCOHOLIC BEVERAGES ON SUNDAY IN (NAME OF CITY OR COUNTY), ARKANSAS, AS AUTHORIZED BY LAW.”

(3)(A) The vote of the majority of the electors in a citywide election approving Sunday sales shall authorize such sales in all permitted outlets located within the incorporated areas of such city only.

(B) The vote of the majority of the electors in a countywide election approving Sunday sales shall authorize such sales in all permitted outlets located anywhere within such county.

(4) The vote of the majority of the electors against the sale of alcoholic beverages on Sunday will have no effect on any area that had previously approved Sunday sales of mixed drinks in hotels and restaurants as authorized by § 3-9-215.

(c) Notwithstanding the authority granted to counties and cities in this section, wholesale distributors of intoxicating alcoholic liquor may not sell or deliver any alcoholic beverages to retailers on a Sunday.

History. Acts 1943, No. 218, § 1; 1959, No. 56, § 1; A.S.A. 1947, § 48-901; Acts 1989, No. 426, § 1; 1999, No. 857, § 1; 2005, No. 1994, § 367; 2007, No. 1017, § 1.

Publisher's Notes. Acts 1943, No. 281, § 1, provided that it would be unlawful for any person, firm, or corporation to sell any wine or beer on Sunday. Section 2 of that act provided that any person violating § 1 would be punished by a fine of not less than fifty dollars (\$50.00) nor more than one hundred dollars (\$100); a second offense would be punished by a fine, revocation of the license, and forfeiture of all money paid for the license. Section 2 further provided that the trial court would determine whether the violation was a first or second offense.

Amendments. The 2005 amendment inserted the subdivision designations in (a); substituted “violation” for “misdemeanor” in (a)(1); and, in (a)(2), inserted “Class B” and deleted “and punished by a fine of not less than two hundred fifty dollars (\$250) nor more than five hundred dollars (\$500) or by imprisonment in the county jail for no fewer than ten (10) days nor more than six (6) months or both so fined and imprisoned in the discretion of the court or jury” from the end.

The 2007 amendment inserted “3-9-216” and made related changes in (a)(1).

Meaning of “this act”. See note to § 3-3-205.

CASE NOTES

ANALYSIS

Evidence.
Intoxicating Liquor.
Local Regulations.
Multiple Offenses.
Prior Convictions.

Evidence.

Circumstantial evidence sufficient to support conviction for both sale of liquor

on Sunday under prior similar statute and sale of untaxed liquor. *Miller v. City of Helena*, 224 Ark. 1016, 277 S.W.2d 841 (1955).

Intoxicating Liquor.

Beer containing 5% alcohol is an intoxicating liquor within the meaning of this section. *Wald v. State ex rel. Robinson*, 196 Ark. 1180, 111 S.W.2d 553 (1937) (decision under prior law).

Local Regulations.

The penalty provision of a city ordinance which prohibited private clubs from serving or allowing consumption of mixed drinks between certain hours was not in conflict with this section since § 3-9-221 describing on-premise consumption at private clubs specifically provides that consumption at a private club is not a "sale." *Tompos v. City of Fayetteville*, 280 Ark. 435, 658 S.W.2d 404 (1983).

Multiple Offenses.

This section provides for enhanced punishment for second and subsequent offenses, not for second and subsequent

convictions. *Strode v. State*, 259 Ark. 859, 537 S.W.2d 162 (1976).

Prior Convictions.

Defendant was on notice from the time the informations were filed that a prior conviction was charged in each and defendant was not denied benefit of notice and the opportunity to prepare and respond accordingly. *Strode v. State*, 259 Ark. 859, 537 S.W.2d 162 (1976).

Cited: *Bryant v. State*, 246 Ark. 872, 440 S.W.2d 534 (1969); *Alpha Zeta Chapter of Pi Kappa Alpha Fraternity v. Sullivan*, 293 Ark. 576, 740 S.W.2d 127 (1987).

3-3-211. Sales on Christmas Day.

(a) It shall be unlawful to sell intoxicating liquors on Christmas Day.

(b) Any person who shall sell intoxicating alcoholic liquors on Christmas Day shall be guilty of a Class B misdemeanor.

History. Acts 1949, No. 266, §§ 1, 2; A.S.A. 1947, §§ 48-950, 48-951; Acts 2005, No. 1994, § 367.

Amendments. The 2005 amendment, in (b), inserted "Class B" and deleted "and shall be fined not less than one hundred

dollars (\$100) nor more than one thousand dollars (\$1,000) or imprisoned in the county jail for not less than thirty (30) days nor more than six (6) months, or both so fined and imprisoned within the discretion of the court or jury."

3-3-212. Manufacturer-seller relationships generally.

(a) It shall be unlawful for a manufacturer to:

(1) Be interested, directly or indirectly, in any premises where malt, vinous, or spirituous liquors are sold at retail or in any business devoted wholly or partially to the sale of such liquors at retail, by stock ownership, interlocking directors, mortgage or lien on any personal or real property, or any other means; or

(2) Make any loan to any owner.

(b)(1) Any lien, mortgage, or other interest or estate, however, now held by a manufacturer on or in the personal or real property of any owner, which mortgage, lien, interest, or estate was acquired on or before December 31, 1933, shall not be included within the provisions of this section.

(2) The burden of establishing the time of the accrual of the interest, comprehended by subdivision (b)(1) of this section, shall be upon the person who claims to be entitled to the protection and exemption afforded by this section.

(c) Subsections (a) and (b) of this section shall not apply to any agreement or arrangement by a manufacturer or wholesaler to pay for the display or other presentation of advertising and promotional material on or about the premises of the holder of a franchise granted by the Arkansas Racing Commission.

History. Acts 1935, No. 108, Art. 3, § 18; Pope's Dig., § 14122; A.S.A. 1947, § 48-908; Acts 2001, No. 1838, § 1.

Cross References. Malt, vinous, or spirituous liquors defined, § 3-1-102.

3-3-213. Manufacturer-seller relationships — Exclusivity agreements.

(a) It shall be unlawful for any person engaged in the manufacture of alcoholic liquors:

(1) To require any wholesaler or retailer to purchase from that manufacturer to the exclusion, in whole or in part, of any alcoholic liquors sold or offered for sale by other persons; or

(2) To induce any retailer to purchase from that manufacturer or wholesaler to the exclusion, in whole or in part, of any alcoholic liquors sold or offered for sale by other persons, by:

(A) Acquiring any interest in property owned, occupied, or used by the retailer in his business, or in any license with respect to the premises of the retailer;

(B) Furnishing, giving, renting, lending, or selling to the retailer any equipment, fixtures, signs, supplies, money, service, or other thing of value, subject to exceptions provided by the rules and regulations of the Alcoholic Beverage Control Board and established trade customs;

(C) Paying or crediting the retailer for any advertising, display, or distribution service;

(D) Guaranteeing any loan or the repayment of any financial obligation of the retailer;

(E) Offering or giving any bonus, premium, or compensation to the retailer or any of his officers, employees, or representatives.

(b) As used in this section, unless the context otherwise requires:

(1) "Person" includes any and all corporations, partnerships, associations, or individuals and all agents, representatives, or employees of such persons;

(2) "Manufacturer" means, unless otherwise specified, any person engaged in the business of distilling, brewing, making, blending, rectifying, or producing for sale in wholesale quantities alcoholic liquors of any kind, including whiskey, brandy, cordials, liquors, and other liquids containing alcohol, except patent medicines, beer, and wine.

History. Acts 1953, No. 362, §§ 1, 3; A.S.A. 1947, § 48-952.

3-3-214. Sale of denatured alcohol.

(a) It is unlawful for any person to sell, give away, or dispose of denatured alcohol for any beverage purposes whatsoever.

(b) Any person who shall sell, give away, or dispose of denatured alcohol for any beverage purpose whatsoever shall be guilty of a violation and for the first offense be punished by a fine of not less than one hundred dollars (\$100) nor more than two hundred fifty dollars

(\$250). For the second and subsequent offenses, he or she shall be guilty of a Class B misdemeanor.

(c) Any person who shall sell, give away, or dispose of denatured alcohol to an habitual drunkard or an intoxicated person shall be prima facie guilty of selling denatured alcohol for beverage purposes and subject to the penalties provided in this section.

History. Acts 1939, No. 139, §§ 1-3; A.S.A. 1947, §§ 48-945 — 48-947; Acts 2005, No. 1994, § 368.

Amendments. The 2005 amendment, in (b), substituted “violation” for “misdemeanor” in the first sentence, and in the second sentence, inserted “or she” and “Class B” and deleted “and punished by a

fine of not less than two hundred fifty dollars (\$250) nor more than five hundred dollars (\$500), or by imprisonment in the county jail for not less than six (6) months nor more than one (1) year, or both so fined and imprisoned in the discretion of the jury” from the end.

3-3-215. Obtaining federal license without state license.

(a) Any person within this state who has had issued to him or her a current federal license to sell liquor or beer in Arkansas and who has not had issued a current state license to sell liquor or beer shall be guilty of a misdemeanor and upon conviction shall be fined in any amount not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500).

(b) In any criminal prosecution under this section, the introduction of a certified copy or microfilm of a current federal license to sell beer or liquor in this state shall be prima facie evidence that the licensee is possessing beer or liquor in this state for sale unlawfully.

History. Acts 1949, No. 241, §§ 1, 2; A.S.A. 1947, §§ 48-948, 48-949.

CASE NOTES

Evidence.

Affidavit stating and explaining contents of federal records held inadmissible.

Glover v. State, 220 Ark. 309, 247 S.W.2d 465 (1952).

3-3-216. Possession or sale of untaxed liquor.

(a) It shall be unlawful for any person to buy, bargain, sell, loan, own, have in possession, or knowingly transport in this state any intoxicating liquor of any kind, as defined in § 3-8-201, upon which the Arkansas excise tax prescribed by law has not been paid.

(b) Any person who shall violate the provisions of this section shall be guilty of a Class B misdemeanor and, in addition to the applicable criminal penalties, shall be subject to a civil penalty equal to the amount of all excise tax levied on such intoxicating liquor at the rates imposed on alcoholic beverages under § 3-7-101 et seq.

(c) The Department of Finance and Administration shall assess and administer the civil penalty set forth in subsection (b) of this section under the provisions of the Arkansas Tax Procedure Act, § 26-18-101 et

seq., and shall promulgate any rules necessary for the proper administration and enforcement of the civil penalty.

(d) However, it shall constitute a Class A misdemeanor for any person to transport intoxicating liquor of any kind, as defined in § 3-8-201, from another state without the Arkansas excise tax having been paid on the intoxicating liquor if the court determines that the defendant was transporting the liquor of any kind for the purpose of resale.

History. Acts 1941, No. 357, § 4; 1943, No. 219, § 1; 1947, No. 206, § 1; 1969, No. 475, § 1; A.S.A. 1947, § 48-934; Acts 1987, No. 965, § 1; 2005, No. 1994, § 369; 2007, No. 666, § 1.

Amendments. The 2005 amendment, in (b), inserted "Class B" and deleted "and upon conviction shall be fined not less than fifty dollars (\$50.00) nor more than

five hundred dollars (\$500) or imprisoned for not more than six (6) months, or both so fined and imprisoned" from the end.

The 2007 amendment inserted "as defined in § 3-8-201" in (a); added "and in addition to the applicable criminal ... §§3-7-101 et seq." in (b); added (c); and, in (d), inserted "of any kind, as defined in § 3-8-201" three times.

CASE NOTES

ANALYSIS

Evidence.
Multiple Offenses.

Evidence.

Statement by sheriff that defendant had a reputation for being a "bootlegger" was not prejudicial to defendant being tried for possession of intoxicating liquor. *Roberts v. State*, 220 Ark. 245, 247 S.W.2d 360 (1952).

Evidence sufficient to support conviction. *Roberts v. State*, 220 Ark. 245, 247 S.W.2d 360 (1952).

Evidence insufficient to support conviction. *Slate v. State*, 221 Ark. 527, 254 S.W.2d 314 (1953).

Circumstantial evidence sufficient to support conviction for both sale of untaxed liquor and sale of liquor on Sunday. *Miller v. City of Helena*, 224 Ark. 1016, 277 S.W.2d 841 (1955).

Multiple Offenses.

Where defendant was arrested while carrying a bucket containing several bottles of corn whiskey, he could properly be charged and convicted for (1) possessing intoxicants for the purpose of sale, and (2) possessing untaxed liquor even though both offenses grew out of the same transaction. *Miller v. State*, 222 Ark. 476, 261 S.W.2d 411 (1953).

Cited: *Leach v. Cook*, 211 Ark. 763, 202 S.W.2d 359 (1947).

3-3-217. [Repealed.]

A.C.R.C. Notes. The amendment to this section by Acts 2005, No. 1994, § 241, was superseded by the repeal of this section by Acts 2005, No. 541, § 2. As amended by Acts 2005, No. 1994, § 241, this section read: "3-3-217. Free lunches prohibited — Penalty.

"(a) It shall be unlawful for any person, company, or corporation to give free lunches in any place where liquors are sold by such persons, company, or corporation.

"(b) Any person, company, or corporation violating the provisions of this section shall be guilty of a Class C misdemeanor."

Publisher's Notes. This section, concerning the prohibition of providing free lunches in establishments where liquors are sold, was repealed by Acts 2005, No. 541, § 2. The section was derived from Acts 1911, No. 143, §§ 2, 3.

3-3-218. Duty of care of privilege license holders — Enforcement.

(a) It is the specifically declared policy of the General Assembly that all licenses issued to establishments for the sale or dispensing of alcoholic beverages are privilege licenses, and the holder of such privilege license is to be held to a high duty of care in the operation of the licensed establishment.

(b) It is the duty of every holder of an alcoholic beverage permit issued by the State of Arkansas to operate the business wherein alcoholic beverages are sold or dispensed in a manner which is in the public interest and does not endanger the public health, welfare, or safety. Failure to maintain this duty of care shall be a violation of this section and grounds for administrative sanctions being taken against the holder of the permit or permits.

(c)(1) The standard of review for the Director of the Alcoholic Beverage Control Division and the Alcoholic Beverage Control Board in matters arising herein shall be:

(A) Whether the permitted outlet, as it has been operated, promotes the public convenience and advantage;

(B) Whether the continuation of the outlet would promote the public interest; and

(C) Whether the outlet's business operation endangers the public health, welfare, or safety of the area or community in which it is located.

(2) It is specifically granted to the director and the board the power to review the outlet and its operation as if it were a new application, taking into consideration all factors involved in the review of an application as initially filed before the agency.

(d)(1) As to all violations occurring inside the permitted premises, the standard of proof shall be by substantial evidence.

(2) As to all violations occurring outside the permitted premises, the standard of proof shall be by clear and convincing evidence.

(e) The Alcoholic Beverage Control Division and its board are hereby authorized to adopt regulations to implement each and every provision of this section.

(f) The director and the board are empowered by this section to administer the full range of penalties available for other administrative proceedings before it, including, but not limited to, fines, suspension, cancellation, or revocation of such permits which have been found to endanger the public health, welfare, or safety.

History. Acts 1989, No. 695, § 1; 2003, No. 1756, § 1.

CASE NOTES

Civil Liability.

This section and §§ 3-4-803 and 3-3-202 create a duty for licensees to exercise a high standard of care for the protection of minors, and a breach of this duty can lead to a suit for negligence. *Shannon v. Wilson*, 329 Ark. 143, 947 S.W.2d 349 (1997).

Section 3-3-209 and this section establish a high duty of care on the part of holders of alcohol licenses, which includes

the duty not to sell alcohol to high-risk groups, including intoxicated persons, and evidence of the sale of alcohol by a licensed vendor to an intoxicated person is some evidence of negligence. *Jackson v. Cadillac Club, Inc.*, 337 Ark. 24, 986 S.W.2d 410 (1999).

Cited: *Branscumb v. Freeman*, 360 Ark. 171, 200 S.W.3d 411 (2004).

SUBCHAPTER 3 — DRY TERRITORIES

SECTION.

3-3-301. Definition.

3-3-302. Penalties.

3-3-303. Rules and regulations.

3-3-304 — 3-3-308. [Repealed.]

3-3-309. Procuring liquor for another.

3-3-310. Solicitation or taking orders.

3-3-311. Seizure and forfeiture of beverages authorized.

SECTION.

3-3-312. Procedure upon seizure of beverages.

3-3-313. Determination of interests in seized beverages.

3-3-314. Sale of confiscated beverages.

3-3-315. Failure to surrender confiscated beverages.

Cross References. Sale, barter, or loan in dry territory — Penalties, § 3-8-312.

Preambles. Acts 1947, No. 91 contained a preamble which read: "Whereas, the present law is uncertain as to the amount of intoxicating liquors which can be possessed legally by a person in any dry county or part thereof in this state;

"Now, therefore"

Effective Dates. Acts 1899, No. 191, § 3: effective on passage. Approved May 8, 1899.

Acts 1917, No. 13, § 21: Jan. 24, 1917. Emergency declared.

Acts 1919, No. 87, § 6 [8]: Feb. 17, 1919. Emergency declared.

Acts 1947, No. 91, § 4: emergency failed to pass.

Acts 1947, No. 423, § 17: Mar. 28, 1947. Emergency clause provided: "Whereas it has been ascertained that the present liquor laws of this state are inadequate for the proper control of alcoholic beverages, and that flagrant violations of the present alcoholic control laws are occurring in increasing number throughout the state and that intoxicating liquors are being shipped through and from this state into other states in violation of their laws, and

this law being necessary to remedy this situation and restore the proper operation of the police powers of this state and to provide for the public peace, health, safety, and well-being, an emergency is hereby declared to exist and this act shall be in full force and effect upon and after its passage and approval."

Acts 1949, No. 347, § 3: effective on passage.

Acts 1969, No. 248, § 8: became law without Governor's signature, Mar. 12, 1969. Emergency clause provided: "It is hereby found and determined by the General Assembly that the cities and counties in this state are in need of additional funds to construct and maintain streets and roads and to engage in other worthwhile activities; that a large amount of confiscated alcoholic beverages are not being turned over to the Director of Alcoholic Beverage Control as is required by law; that the cities and counties of this state can more effectively sell any alcoholic beverages seized and forfeited than can the state; and that in order to permit cities and counties this additional source of revenues and to encourage the more effective enforcement of the alcoholic beverage laws of this state, it is necessary

that this act become effective immediately. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety shall become effective from and after its passage and approval."

Acts 1971, No. 585, § 34: approved Apr. 6, 1971. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that in order to establish an orderly procedure which will insure the monthly and quarterly distribution of funds for the necessary services and operations of the state government, as provided for in this act, it is necessary that the provisions of this act become effective

immediately; that under the provisions of this act seriously needed improvements for many of our public institutions are contemplated, and only the provisions of this act will provide such funds which will be adequate to alleviate this situation; and that only the provisions of this act will correct many of our financial difficulties, and which otherwise may deprive the citizens of this state from receiving the benefits for which the operation of state government contemplates. Therefore, an emergency is hereby declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall take effect and be in full force from and after its passage."

RESEARCH REFERENCES

Ark. L. Rev. Constitutional Law — State Regulation of Interstate Liquor Traffic, 4 Ark. L. Rev. 222.

CASE NOTES

Constitutionality.

Acts 1947, No. 423 does not violate Ark. Const., Art. 7, § 11, as taking jurisdiction from the circuit court and placing it in the commissioner of revenues (now Director of the Alcoholic Beverage Control Division).

Morley v. Fifty Cases of Whiskey, 216 Ark. 528, 226 S.W.2d 344 (1950).

Acts 1947, No. 423 is not unconstitutional as a local or special act. *Morley v. Fifty Cases of Whiskey*, 216 Ark. 528, 226 S.W.2d 344 (1950).

3-3-301. Definition.

As used in this subchapter, unless the context otherwise requires, "person" means any individual, corporation, partnership, association, firm, or other business entity, or its agents or representatives.

History. Acts 1947, No. 423, § 1; A.S.A. 1947, § 48-920.

CASE NOTES

Cited: *Hale v. Jones*, 212 Ark. 437, 206 S.W.2d 17 (1947).

3-3-302. Penalties.

(a) Unless a different penalty is specifically provided, any person who shall violate any of the provisions of this subchapter shall be guilty of a Class A misdemeanor.

(b) In addition to all other fines and penalties herein provided, the Director of the Alcoholic Beverage Control Division shall revoke all alcoholic beverage permits held by any person convicted for a violation of this subchapter.

History. Acts 1947, No. 423, §§ 13, 14; A.S.A. 1947, §§ 48-932, 48-933; Acts 2005, No. 1994, § 211.

Amendments. The 2005 amendment substituted "Class A misdemeanor" for "misdemeanor and upon conviction shall be fined in a sum not less than fifty dollars (\$50.00) nor more than one thousand dol-

lars (\$1,000) or be confined in the county jail for a period of not less than six (6) months nor more than one (1) year, or be both fined and imprisoned" in (a).

Cross References. Revocation and suspension proceedings generally, §§ 3-2-212 — 3-2-217.

CASE NOTES

Cited: Hale v. Jones, 212 Ark. 437, 206 S.W.2d 17 (1947).

3-3-303. Rules and regulations.

The Director of the Alcoholic Beverage Control Division shall promulgate all rules and regulations necessary to enforce and administer this subchapter.

History. Acts 1947, No. 423, § 12; A.S.A. 1947, § 48-931.

CASE NOTES

Cited: Hale v. Jones, 212 Ark. 437, 206 S.W.2d 17 (1947).

3-3-304 — 3-3-308. [Repealed.]

A.C.R.C. Notes. The amendments to §§ 3-3-305 and 3-3-306 by Acts 2005, No. 1994, § 29, were superseded by the repeal of §§ 3-3-305 and 3-3-306 by Acts 2005, No. 1964, §§ 2, 3. As amended by Acts 2005, No. 1994, § 29, these sections read: "3-3-305. Transportation by motor vehicle.

"(a) It is unlawful for a motor vehicle to carry at any one time in any county or part of a county in which it is unlawful to manufacture, sell, barter, loan, or give away intoxicating liquors, more than one (1) gallon of spirituous, vinous, or malt liquor and three (3) gallons or one (1) case of beer.

"(b) Any alcoholic beverages in excess of the amounts prescribed above found inside or on a vehicle in violation of this section shall be confiscated pursuant to an order of a court of competent jurisdiction.

"(c) The provisions of this section shall not apply to properly licensed retailers and wholesalers when so authorized by the Director of the Alcoholic Beverage Control Division, to common carriers or bonded carriers duly licensed by the Arkansas State Highway and Transportation Department, to a private or contract carrier holding a proper permit from the Director of the Alcoholic Beverage Control Division to transport intoxicating liquors within the State of Arkansas where the liquors are consigned to a point beyond the dry territory, or to individuals in transit when the individuals are not residents of the dry territory.

"(d) The operator of any motor vehicle violating the provisions of this section shall be guilty of a violation and shall be fined not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500).

"(e) This section shall not be deemed to repeal any acts pertaining to possession of alcoholic beverages in dry territory, but shall be cumulative thereto.

"3-3-306. Possession of alcoholic beverages other than beer.

"(a) It shall be unlawful for any person, firm, or corporation to possess more than one (1) gallon of spirituous, vinous, or malt liquors other than beer, in any county or part of a county in which it is unlawful to manufacture, sell, barter, loan, or give away intoxicating liquors.

"(b) Such liquor or liquors found in the possession of any person shall be confiscated pursuant to an order of a court of competent jurisdiction.

"(c) The provisions of this section shall not apply to common carriers in transit through such county providing further that the provisions of this section shall not apply to licensed bonded dealers or individuals in transit, when those individuals are not residents of the dry county.

"(d) Any person, firm, or corporation violating the provisions of this section shall be guilty of a violation and shall be fined not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500)."

Publisher's Notes. These sections, concerning the storage, possession, and transportation of alcoholic beverages in dry counties, were repealed by Acts 2005, No. 1964, §§ 1-5. The sections were derived from the following sources:

3-3-304. Acts 1947, No. 423, § 2; A.S.A. 1947, § 48-921.

3-3-305. Acts 1953, No. 28, §§ 1-4; 1971, No. 57, § 1; A.S.A. 1947, §§ 48-922.1 — 48-922.3, 48-922.3n.

3-3-306. Acts 1947, No. 91, §§ 1, 2; A.S.A. 1947, §§ 48-918, 48-919.

3-3-307. Acts 1949, No. 347, § 1; A.S.A. 1947, § 48-919.1.

3-3-308. Acts 1947, No. 423, § 3; A.S.A. 1947, § 48-922.

3-3-309. Procuring liquor for another.

(a)(1) It shall be unlawful for any person to either directly or indirectly procure or purchase for another in any district or territory where they are prohibited by law:

(A) Any alcohol or spirituous, ardent, vinous, malt, or fermented liquors;

(B) Any compound or preparation thereof commonly called tonics, bitters, or medicated liquors; or

(C) Intoxicating spirits of any character.

(2) However, this section shall not prohibit one (1) person from buying for another from a licensed dealer.

(b) Any person who shall violate any of the provisions of this section shall be guilty of a violation and fined in any sum not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500).

History. Acts 1899, No. 191, §§ 1, 2, p. 335; C. & M. Dig., §§ 6163, 6164; A.S.A. 1947, §§ 48-914, 48-915; Acts 2005, No. 1994, § 30.

Amendments. The 2005 amendment

substituted "violation" for "misdemeanor" in (b).

Cross References. Sale in dry territory prohibited, § 3-8-209.

CASE NOTES

ANALYSIS

Unlawful Sales.
Validity.

Unlawful Sales.

A person indicted for selling liquor without a license could not be convicted under

this section. *Woods v. State*, 114 Ark. 391, 170 S.W. 79 (1914).

The doctrine that a person charged with unlawfully selling intoxicating liquor cannot be convicted upon proof that he participated only as a purchaser or agent for the purchaser has no application in a charge under this section. *Anderson v. State*, 161 Ark. 46, 255 S.W. 319 (1923).

Validity.

Subdivision (a)(2) of this section was added for emphasis, is merely surplusage, and does not render the section void. *Payne v. State*, 124 Ark. 20, 186 S.W. 612 (1916).

3-3-310. Solicitation or taking orders.

(a) It shall be unlawful for any person, firm, or corporation in this state in person, by letter, circular, or other printed matter, or in any other manner, to solicit or take orders in this state for any alcoholic, vinous, malt, spirituous, or fermented liquors or any compound or preparation thereof commonly called tonic, bitters, or medicated liquors, or any other liquors, bitters, or drinks prohibited by the laws of this state to be sold, bartered, or otherwise disposed of.

(b) The prohibition of this section shall apply to such liquors, bitters, and drinks, whether the parties intend that the liquors, bitters, or drinks shall be shipped into this state from outside of the state or from one (1) point in this state to another point in this state.

(c) The taking or soliciting of orders for the above-described liquors is within the inhibition of this section, although the orders are subject to approval by some other person, and no part of the price is paid, nor any part of the goods is delivered when the order is taken.

(d) If such order is in writing, parol evidence thereof is admissible without producing or accounting for the absence of the original.

(e) Upon conviction, any person, firm, or corporation violating any of the provisions of this section, except as otherwise expressly provided in this section, shall be guilty of a Class B misdemeanor.

History. Acts 1917, No. 13, §§ 10, 19, p. 41; 1919, No. 87, § 5[7]; C. & M. Dig., §§ 6174, 6183; Pope's Dig., § 14155; A.S.A. 1947, §§ 48-916, 48-917; Acts 2005, No. 1994, § 370.

Publisher's Notes. This section was enacted when intoxicating liquor was prohibited in the entire state. Acts 1933 (Ex. Sess.), No. 7, § 23, repealed it with respect to beer and light wine. Acts 1935, No. 108, Art. 3, § 18-A, repealed it "in its entirety, excepting only as to those counties in which the sale of alcoholic liquors may later be prohibited under the local option provisions." Acts 1935, No. 108, Art. 3, § 18-A, further provided that it

should not be "construed to prohibit the advertising of any alcoholic liquors legalized by this act in any newspaper within this state."

Amendments. The 2005 amendment substituted "guilty of a Class B misdemeanor" for "fined not less than one hundred dollars (\$100) and not more than one thousand dollars (\$1,000) for each offense and may be confined not less than thirty (30) days nor more than ninety (90) days in the county jail" in (e); and deleted former (f).

Cross References. Local option laws, § 3-8-101 et seq.

CASE NOTES

ANALYSIS

Amount of Fine.
Jurisdiction.

Amount of Fine.

Fixing the amount of fine for a liquor violation is within the province of the jury and a fine within the statutory limits will

not be reduced on appeal. *Pillow v. State*, 160 Ark. 195, 254 S.W. 462 (1923); *Garner v. State*, 184 Ark. 1093, 44 S.W.2d 1092 (1932).

Jurisdiction.

Municipal courts have jurisdiction of causes arising under this section. *Gans v. State*, 132 Ark. 481, 201 S.W. 823 (1918).

3-3-311. Seizure and forfeiture of beverages authorized.

(a) All spirituous, vinous, or malt liquors or beverages found in the possession of any person violating this or any other alcoholic beverage control law of this state are declared to be contraband and shall be seized and forfeited.

(b) Alcoholic or malt beverages subject to confiscation under this subchapter shall include those on which the Arkansas liquor excise tax has been paid as well as those on which the tax has not been paid.

(c) The confiscation of alcoholic beverages hereunder shall be in addition to any other criminal penalties now or hereafter prescribed by law.

History. Acts 1947, No. 423, §§ 6, 11; A.S.A. 1947, §§ 48-925, 48-930.

Cross References. Search warrants, § 3-2-304.

CASE NOTES

ANALYSIS

Federal Authority.
Interstate Transportation.

Federal Authority.

Federal court would not interfere with state procedure for seizure and sale, on the ground that liquor was seized without a warrant, after the liquor was in the possession of the Commissioner of Revenues (now mayor or county judge), and due publication of notice of sale was given. *Chambless v. Cannon*, 81 F. Supp. 885 (W.D. Ark. 1949).

Interstate Transportation.

Where driver did not have an Arkansas permit, seizure of truck load of whiskey being transported through Arkansas did not violate the due process clause of Ark. Const., Art. 2, § 8, or the interstate commerce clause of U.S. Const., Art. 1, § 8, since 21st Amendment of the U.S. Constitution prohibits transportation of intoxicating liquor into any state in violation of state law. *Welborn v. Morley*, 219 Ark. 569, 243 S.W.2d 635 (1951).

Cited: *Hale v. Jones*, 212 Ark. 437, 206 S.W.2d 17 (1947).

3-3-312. Procedure upon seizure of beverages.

(a) All spirituous, vinous, or malt beverages found in the possession of any person in violation of the laws as provided in this subchapter shall be seized and immediately turned over to the mayor if seized within the city limits of a municipality by a law enforcement officer of that municipality. They shall be turned over to the county judge if seized without or within the city limits of any municipality by the

sheriff or any Department of Arkansas State Police officer or any Alcoholic Beverage Control Enforcement Division agent.

(b) The seized beverages are to be held by the mayor or county judge until such time as any municipal court of the county wherein the beverages were seized determines the beverages to be contraband and subject to sale.

(c) The mayor or the county judge, as the case may be, shall cause a notice to be published. This shall be done within three (3) days after being authorized by the court to sell the seized intoxicating liquors. The notice shall be published in a newspaper having a countywide circulation and shall appear in the newspaper twice within a thirty-day period, fifteen (15) days apart. The notice shall contain a list of the beverages authorized to be sold by the court, the approximate retail value thereof, the person, if known, from whom taken, the place where seized, and the advice that the beverages will be sold by the mayor or the county judge, as the case may be, at the expiration of thirty (30) days from the first published notice.

History. Acts 1947, No. 423, § 7; 1969, No. 248, § 1; A.S.A. 1947, § 48-926.

CASE NOTES

Federal Authority.

Federal court would not interfere with state procedure for seizure and sale on the ground that liquor was seized without a warrant, after the liquor was in the possession of the Commissioner of Revenues

(now mayor or county judge), and due publication of notice of sale was given. *Chambless v. Cannon*, 81 F. Supp. 885 (W.D. Ark. 1949).

Cited: *Hale v. Jones*, 212 Ark. 437, 206 S.W.2d 17 (1947).

3-3-313. Determination of interests in seized beverages.

(a) Any person claiming any interest in any alcoholic beverages seized under this subchapter may present a written petition. This may be done at any time within thirty (30) days from the date of seizure of the alcoholic beverages. The petition shall be presented to the municipal court of the county wherein the beverages were seized, shall set out the nature of the interest, and shall request that a hearing be held by the court to determine his or her right or interest therein.

(b) The municipal judge of that court shall set a date for the hearing, which date shall be within ten (10) days from the date the hearing is requested, unless good and sufficient cause is shown and recorded for a further delay.

(c) At the hearing all witnesses shall be duly sworn and the testimony recorded by a stenographer.

(d) Within fifteen (15) days after the completion of the hearing, the municipal judge shall enter his or her written findings of fact and order upon the testimony so presented.

(e) The findings of fact and order of the municipal judge may be appealed to the circuit court of the county wherein the alcoholic beverages were seized. Appeal may be had by filing a transcript of

record of the hearing held before the judge with the court within fifteen (15) days after the municipal judge's order has been duly entered.

(f) The circuit court shall hear no new evidence on this appeal and shall render its judgment only on errors of law.

(g) An appeal from the judgment of the circuit court may be taken as provided by law.

History. Acts 1947, No. 423, §§ 8, 9; 1969, No. 248, §§ 2, 3; A.S.A. 1947, §§ 48-927, 48-928.

CASE NOTES

ANALYSIS

Constitutionality.
Federal Authority.

Constitutionality.

The procedure prescribed by statute for a claimant to have his rights in confiscated liquor determined in no way deprives him of his property without due process of law. *Morley v. Fifty Cases of Whiskey*, 216 Ark. 528, 226 S.W.2d 344 (1950) (decision prior to 1969 amendment).

Federal Authority.

Federal court would not interfere with state procedure for seizure and sale on the ground that liquor was seized without a warrant, after the liquor was in the possession of the Commissioner of Revenues (now mayor or county judge), and due publication of notice of sale was given. *Chambless v. Cannon*, 81 F. Supp. 885 (W.D. Ark. 1949).

Cited: *Hale v. Jones*, 212 Ark. 437, 206 S.W.2d 17 (1947).

3-3-314. Sale of confiscated beverages.

(a) Immediately upon the expiration of thirty (30) days from the date of the first notice provided in § 3-3-312, the mayor or the county judge, as the case may be, shall immediately notify licensed liquor wholesalers and retailers in the county, or, if the county is dry, then the licensed liquor wholesalers and retailers in the nearest wet county, that the contraband will be sold to the highest bidder and shall request all licensed liquor wholesalers and retailers to submit sealed bids.

(b) No confiscated alcoholic beverages shall be sold at less than fifty percent (50%) of the retailers' selling price of such liquor as defined in Acts 1949, No. 282, § 4, as amended [repealed].

(c) In the event that alcoholic beverages are confiscated upon which the Arkansas tax has not been paid, the retailer or wholesaler buying the beverages is required to pay the tax.

(d) All funds derived from the sale of the confiscated alcoholic beverages shall be deposited as follows:

(1) Fifty percent (50%) in the general fund of the city or the county, as the case may be; and,

(2) Fifty percent (50%) thereof as general revenues in the State Treasury to the credit of the State Apportionment Fund. There the funds shall be allocated and distributed to the various funds, fund accounts, and accounts participating in general revenues in the respective proportions to each as provided by law and shall be used for the

respective purposes set forth in the Revenue Stabilization Law, § 19-5-101 et seq.

(e) The county or city officials are required to file a report at the end of each month with the Alcoholic Beverage Control Division showing the number of arrests, the amount of alcoholic beverages confiscated, and the amount of money collected from the sale of such beverages.

History. Acts 1947, No. 423, § 10, as added by Acts 1971, No. 585, § 12; A.S.A. added by Acts 1953, No. 118, § 36(D), as 1947, § 48-929.

CASE NOTES

Cited: Hale v. Jones, 212 Ark. 437, 206 S.W.2d 17 (1947).

3-3-315. Failure to surrender confiscated beverages.

Any person who shall seize or confiscate any spirituous, vinous, or malt beverages under the provisions of §§ 3-3-311 and 3-3-312 and who shall not immediately turn over the spirituous, vinous, or malt beverages as required by § 3-3-312 to the mayor or the county judge, as the case may be, shall be guilty of a Class A misdemeanor.

History. Acts 1969, No. 248, § 5; A.S.A. 1947, § 48-929.1; Acts 2005, No. 1994, § 334.

Amendments. The 2005 amendment inserted "Class A" and deleted the former second sentence, which stated: "Upon con-

viction, he shall be subject to a fine of not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500) or imprisonment of not less than three (3) months nor more than one (1) year, or both such fine and imprisonment."

SUBCHAPTER 4 — ILLICIT MANUFACTURE AND EQUIPMENT

SECTION.

3-3-401. Definition.

3-3-402. Manufacture, possession, and transportation.

3-3-403. Seizure and forfeiture of vehicles.

SECTION.

3-3-404. Destruction and sale of still.

3-3-405. Defendant's reputation as evidence.

Effective Dates. Acts 1935, No. 108, Art. 10: approved Mar. 16, 1935. Emergency clause provided: "Whereas, the repeal of the Eighteenth Amendment to the Constitution of the United States has created an emergency which requires immediate control of intoxicating liquors; and

"Whereas, the present state revenue does not meet the needs for the maintenance and development of the State Government and its agencies and the state's credit is threatened with impairment, an

emergency is declared to exist and this act shall become a law and be effective on its passage and approval or nonaction by the Governor."

Acts 1949, No. 200, § 4: Mar. 1, 1949. Emergency clause provided: "Whereas, the present law regulating the possession of illicit stills and the unlawful manufacture of liquor is inadequate to deter violations thereof, now, therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of

the public peace, health, and safety, shall take effect and be in full force from and after its passage and approval."

Acts 1975, No. 928, § 1: effective simultaneously with the Arkansas Criminal Code on Jan. 1, 1976.

3-3-401. Definition.

(a) As used in this subchapter, unless the context otherwise requires, "illicit still" means an apparatus designed for the unlawful manufacture of intoxicating liquor, which shall include an outfit or parts of an outfit commonly used, or intended to be used, in the distillation or manufacture of spirituous, vinous, or malt liquors and which is not duly registered in the office of the Commissioner of Internal Revenue for the United States.

(b) The burden of proving that the still or apparatus is so registered shall be on the defendant or defendants under charge.

History. Acts 1935, No. 108, Art. 6, § 5; Pope's Dig., § 14138; A.S.A. 1947, § 48-937.

Cross References. Spirituous, vinous, and malt liquors defined, § 3-1-102.

3-3-402. Manufacture, possession, and transportation.

(a) It shall be unlawful for any person, including any corporation or legal entity:

(1) To own, possess, or knowingly transport any illicit still, still worm, or any apparatus or any substantial part of any illicit still designed for the unlawful manufacture of spirituous, vinous, or malt liquor;

(2) To manufacture or engage in the manufacture of spirituous, vinous, or malt liquor in the State of Arkansas without obtaining a license to do so from the State of Arkansas and the United States; or

(3) To own, possess, or knowingly transport any illicitly distilled spirituous, vinous, or malt liquors.

(b) Any person committing an offense defined by this section is guilty of a Class D felony.

History. Acts 1949, No. 200, §§ 1, 2; 1961, No. 458, § 1; 1969, No. 475, § 2; 1975, No. 928, § 20; A.S.A. 1947, §§ 48-936.1, 48-936.2.

Publisher's Notes. Acts 1975, No. 928, § 2, provided that, notwithstanding that all or part of a statute defining a criminal offense is amended or repealed by this act, the provisions so amended or repealed

shall remain in force for the purpose of authorizing the prosecution, conviction, and punishment of a person committing an offense under the provisions prior to the effective date of this act.

Cross References. Class D felony, fines, § 5-4-201.

Class D felony, imprisonment, § 5-4-401.

CASE NOTES

ANALYSIS

Appeal.

Evidence.

Information.

Possession of Still Worm.

Separate Offenses.

Appeal.

Failure to object to action of the trial judge in interrogating a witness as to defendant's reputation for dealing in intoxicating liquor and refusal to permit defendant to present rebuttal evidence waived such alleged error on appeal. *Chandler v. State*, 243 Ark. 22, 417 S.W.2d 957 (1967).

Evidence.

Reputation of defendant as a bootlegger and moonshiner held admissible in trial of defendant charged with possession of illicit still. *Smith v. State*, 220 Ark. 959, 251 S.W.2d 591 (1952) (decision under prior law).

Evidence of possession of marijuana, possession of drug paraphernalia, and possession of an illicit whiskey still, found in defendant's residence, held sufficient. *White v. State*, 47 Ark. App. 127, 886 S.W.2d 876 (1994).

Information.

Where information charged defendant with possession of unregistered "still and still worm," defendant was not misled as to crime charged even though only possession of a still worm was shown since court made it plain by its instructions that defendant could be found guilty only of possession of a still worm. *Philyaw v. State*, 228 Ark. 71, 305 S.W.2d 851 (1957), cert. denied, 356 U.S. 340, 78 S. Ct. 777, 2 L. Ed. 2d 809 (1958).

Possession of Still Worm.

Where defendant was charged with possession of unregistered "still and still worm," it did not matter that the still was not set up and therefore did not require registration with federal authorities since possession of the still worm was all that was required to be proved. *Philyaw v. State*, 228 Ark. 71, 305 S.W.2d 851 (1957), cert. denied, 356 U.S. 340, 78 S. Ct. 777, 2 L. Ed. 2d 809 (1958).

Separate Offenses.

The possession of an illicit still, the possession of a still worm, and the manufacture of spirituous liquors without a license are three separate violations. *Philyaw v. State*, 228 Ark. 71, 305 S.W.2d 851 (1957), cert. denied, 356 U.S. 340, 78 S. Ct. 777, 2 L. Ed. 2d 809 (1958).

3-3-403. Seizure and forfeiture of vehicles.

(a) All vehicles or vessels used in the transportation or storage of any illicitly distilled spirituous, vinous, or malt liquor or any illicit still, still worm, or other apparatus designed for the unlawful manufacture of spirituous, vinous, or malt liquor shall be seized and forfeited and shall be sold by the Director of the Alcoholic Beverage Control Division at public auction or to state agencies desiring to purchase the vehicles or vessels.

(b) All proceeds derived from the sale of the seized and forfeited vehicles or vessels shall be special revenues and shall be deposited in the State Treasury to the credit of the Public School Fund.

History. Acts 1969, No. 475, § 3; A.S.A. 1947, § 48-936.3.

3-3-404. Destruction and sale of still.

(a) The court, upon conviction of any defendant for illegal manufacture or sale or gift of intoxicating alcoholic liquors, shall order the destruction of any illicit stills or apparatus designed for the manufac-

ture of intoxicating liquor belonging to or under the control of the defendant.

(b) The court may order the copper or other property sold.

(c) The proceeds of the sale shall be paid to the county treasurer of the county for the benefit of the road fund.

History. Acts 1935, No. 108, Art. 6, § 9; Pope's Dig., § 14142; A.S.A. 1947, § 48-938.

3-3-405. Defendant's reputation as evidence.

In any prosecution or proceeding for any violation of this act, the general reputation of the defendant for moonshining, bootlegging, or being engaged in the illicit manufacture of or trade in intoxicating liquors shall be admissible in evidence against the defendant.

History. Acts 1935, No. 108, Art. 6, § 7; Pope's Dig., § 14140; A.S.A. 1947, § 48-940.

Meaning of "this act". Acts 1935, No. 108, codified as §§ 3-1-101 — 3-1-103, 3-2-101, 3-2-205, 3-3-101 — 3-3-103, 3-3-212, 3-3-401, 3-3-404, 3-3-405, 3-4-101 —

3-4-103, 3-4-201, 3-4-202, 3-4-207 — 3-4-211, 3-4-213, 3-4-214, 3-4-215 [repealed], 3-4-217, 3-4-219, 3-4-220, 3-4-301 — 3-4-303, 3-4-501, 3-4-503, 3-4-601 — 3-4-605, 3-8-301 — 3-8-311, 3-8-313 — 3-8-317, 23-12-708.

CASE NOTES

ANALYSIS

Constitutionality.

Admissibility.

—In General.

—Civil Proceeding.

—Present Reputation.

—Previous Raids.

—Prior Convictions.

Opening Statements.

Sufficiency.

Constitutionality.

This section is constitutional. *Stewart v. State*, 240 Ark. 701, 402 S.W.2d 116 (1966).

Admissibility.

—In General.

General reputation of the defendant for moonshining, bootlegging, or engaging in the illegal manufacture or sale of intoxicating liquors is admissible in prosecution for sale without license. *Gray v. State*, 212 Ark. 1023, 208 S.W.2d 988 (1948).

Where defendant was being prosecuted for violation of § 3-3-208, testimony of law enforcement officers that defendant had the reputation of being a bootlegger in

that community on the date of the alleged offense, was permitted under this section. *Eoff v. State*, 218 Ark. 109, 234 S.W.2d 521 (1950).

Evidence of defendant's reputation was admissible in prosecution for violation of liquor laws in dry county. *Huffman v. State*, 222 Ark. 319, 259 S.W.2d 509 (1953); *Thompson v. State*, 225 Ark. 1059, 287 S.W.2d 465 (1956); *Manley v. State*, 226 Ark. 415, 290 S.W.2d 446 (1956); *Wimberly v. State*, 240 Ark. 345, 399 S.W.2d 274 (1966); *Clark v. State*, 246 Ark. 1151, 442 S.W.2d 225 (1969).

—Civil Proceeding.

General reputation of defendant for illegal dealing in liquor was not admissible in civil proceeding by state to collect penalties for taxes due on liquor purchased by defendant in Louisiana and sold in Arkansas. *Parker v. Marsh*, 221 Ark. 229, 252 S.W.2d 624 (1952).

—Present Reputation.

The rule that only recent reputation should be considered was complied with. *Freyaldenhoven v. State*, 217 Ark. 484, 231 S.W.2d 121 (1950).

Reputation of defendant as a bootlegger and moonshiner was admissible in trial of defendant charged with possession of illicit still where question concerning reputation was couched in present tense. *Smith v. State*, 220 Ark. 959, 251 S.W.2d 591 (1952).

—Previous Raids.

In prosecution for illegal sale and possession of liquor for sale, testimony as to other occasions when premises of defendant had been raided and liquor found was admissible to show the nature of the business in which he was engaged. *Craig v. State*, 204 Ark. 798, 164 S.W.2d 1007 (1942).

—Prior Convictions.

In prosecution for possession of untaxed intoxicating liquor, evidence of prior conviction on similar charge was held admissible. *Burrell v. State*, 203 Ark. 1124, 160 S.W.2d 218 (1942).

Evidence of prior convictions of liquor law violations was held admissible in prosecution for possessing liquor for sale

in dry county. *Thompson v. State*, 225 Ark. 1059, 287 S.W.2d 465 (1956).

Opening Statements.

In prosecution for possessing liquor for sale in a dry county, prosecuting attorney had the right to state in his opening statement that the state expected to introduce evidence as to the reputation of defendants for illicit dealing in liquor. *Thompson v. State*, 225 Ark. 1059, 287 S.W.2d 465 (1956).

Sufficiency.

In prosecution of defendant for possession of intoxicating liquor for purpose of sale in dry territory, the jury has a right to consider defendant's reputation for engaging in illegal liquor traffic in determining his guilt or innocence of the charge, but proof of such reputation alone will not sustain a conviction. *Richardson v. State*, 211 Ark. 1019, 204 S.W.2d 477 (1947); *Freeman v. State*, 214 Ark. 359, 216 S.W.2d 864 (1949).

Cited: *Johnson v. Benton*, 240 Ark. 781, 402 S.W.2d 395 (1966).

CHAPTER 4

ALCOHOLIC BEVERAGES GENERALLY — PERMITS

SUBCHAPTER

1. GENERAL PROVISIONS.
2. ISSUANCE AND TERMS.
3. REVOCATION.
4. VIOLATIONS.
5. DISPOSITION OF FEES AND TAXES.
6. PARTICULAR PERMITS.
7. POST EXCHANGE PACKAGE PERMIT.
8. RESPONSIBLE PERMITTEE PROGRAMS.
9. CATERER'S PERMIT.

A.C.R.C. Notes. References to "this chapter" in subchapters 1-6 may not apply to subchapters 7 and 8, which were enacted subsequently.

References to "this chapter" in subchapters 1-6, 8, and §§ 3-4-701 to 3-4-705 may not apply to § 3-4-706 which was enacted subsequently.

Publisher's Notes. This chapter contains provisions regulating licensing of

the manufacture and sale of alcoholic beverages generally, including, in some instances, beers and wines. Subchapter 5 contains provisions which specifically relate to the licensing of the manufacture and sale of certain kinds of beers and wines. Additionally, Subchapter 6 contains provisions which specifically relate to the licensing of the manufacture and sale of native brandy.

RESEARCH REFERENCES

A.L.R. Liquor license as subject to execution or attachment. 40 A.L.R.4th 927.
Intoxicating liquors: products liability. 42 A.L.R.4th 253.

Am. Jur. 45 Am. Jur. 2d, Intox. L., § 114 et seq.

C.J.S. 48 C.J.S., Intox. L., § 90 et seq.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

3-4-101. Permit required.

3-4-102. Exhibition of permit.

3-4-103. Fiduciaries — Continuation of permitted business.

SECTION.

3-4-104. Sale by fiduciaries or insurers.

Cross References. Beer permits, §§ 3-5-206, 3-5-1303.

Effective Dates. Acts 1935, No. 108, Art. 10: approved Mar. 16, 1935. Emergency clause provided: "Whereas, the repeal of the Eighteenth Amendment to the Constitution of the United States has created an emergency which requires immediate control of intoxicating liquors; and

"Whereas, the present state revenue does not meet the needs for the maintenance and development of the State Government and its agencies and the state's credit is threatened with impairment, an emergency is declared to exist and this act shall become a law and be effective on its passage and approval or nonaction by the Governor."

3-4-101. Permit required.

(a) No vinous (except wines), spirituous, or malt liquors shall be manufactured in this state for storage or sale at retail within the state without a permit therefor issued by the Director of the Alcoholic Beverage Control Division as herein provided.

(b) No person shall sell vinous, spirituous, or malt liquors in this state, except as provided in this act. However, the provisions of this act shall not apply to the manufacture, sale, and distribution of wines in this state.

History. Acts 1935, No. 108, Art. 3, § 2; Pope's Dig., § 14105; A.S.A. 1947, § 48-302.

Publisher's Notes. Acts 1935, No. 108, Art. 1, § 6, provides that the exclusion of wines from the provisions of Acts 1935, No. 108 is intended to exclude only wines or vinous liquors manufactured in the State of Arkansas.

Meaning of "this act". Acts 1935, No.

108, codified as §§ 3-1-101 — 3-1-103, 3-2-101, 3-2-205, 3-3-101 — 3-3-103, 3-3-212, 3-3-401, 3-3-404, 3-3-405, 3-4-101 — 3-4-103, 3-4-201, 3-4-202, 3-4-207 — 3-4-211, 3-4-213, 3-4-214, 3-4-215 [repealed], 3-4-217, 3-4-219, 3-4-220, 3-4-301 — 3-4-303, 3-4-501, 3-4-503, 3-4-601 — 3-4-605, 3-8-301 — 3-8-311, 3-8-313 — 3-8-317, 23-12-708.

RESEARCH REFERENCES

A.L.R. Interplay between Twenty-First Amendment and Commerce Clause concerning state regulation of intoxicating liquors. 116 A.L.R.5th 149.

3-4-102. Exhibition of permit.

(a) Before commencing or doing any business for the time for which a permit has been issued, the permit shall be enclosed in a suitable wood or metal frame having a clear glass space and a substantial wood or metal back so that the whole of the permit may be seen therein. The permit shall be posted upon and at all times displayed in a conspicuous place in the room where the business is carried on, so that all persons visiting the place may readily see it.

(b) It shall be unlawful for any person holding a permit to post the permit or allow the permit to be posted upon premises other than the premises permitted or upon premises where traffic in beer, wine, or liquor is being carried on by any person other than the permittee or knowingly to deface, destroy, or alter any permit in any respect.

History. Acts 1935, No. 108, Art. 3, § 20; Pope's Dig., § 14125; A.S.A. 1947, § 48-320.

3-4-103. Fiduciaries — Continuation of permitted business.

(a) If a corporation or copartnership holding a permit under this act shall be dissolved, or if a receiver or assignee for the benefit of creditors is appointed therefor, or if a receiver or assignee for the benefit of creditors or a committee of the property of an individual holding a permit is appointed during the time for which the permit was granted, or if a person holding a permit dies during the term for which the permit was given, then the corporation, copartnership, receiver, or assignee, or the administrator or executor of the estate of the individual, or a committee of the property of a person adjudged to be incompetent may continue to carry on the business upon the premises for a period not to exceed twenty-four (24) months from such date of dissolution or appointment or death. The successors in interest shall be allowed to renew the permit as if the original permittee were still in place and the said successor in interest may operate the said business with the same right and subject to the same restrictions and liabilities as if he had been the original applicant for and the original holder of the permit, provided the approval of the Director of the Alcoholic Beverage Control Division shall be first obtained.

(b) Before continuing the business, the receiver, assignee, individual, or committee shall file a statement setting forth in such form and substance as the director may prescribe by rule and regulation the facts and circumstances by which they have succeeded to the rights of the original permittee.

(c) The director may, in his discretion, permit the continuance of the business or may refuse to do so.

(d) In the event that the director determines to permit the continuance of the business, the permit shall be submitted to the Director of the Alcoholic Beverage Control Division, and shall have written or stamped across the face of the permit, and signed by the Director of the Alcoholic Beverage Control Division, the following words:

“(Here insert the name of the person) is permitted to manufacture or sell (as the case may be) malt, vinous, or spirituous liquors, as (here insert the representative capacity, whether as assignee, receiver, executor, administrator, or otherwise) of the original permittee for the unexpired term.”

(e) For each endorsement, a fee of five dollars (\$5.00) shall be paid to the Director of the Department of Finance and Administration by the applicant, which shall be paid into the same fund as other permit fees herein provided.

History. Acts 1935, No. 108, Art. 3, § 19; Pope's Dig., § 14124; A.S.A. 1947, § 48-319; Acts 1995, No. 652, § 7. **Meaning of “this act”.** See note to § 3-4-101.

3-4-104. Sale by fiduciaries or insurers.

(a) Any person, including an individual, partnership, association, or corporation, not otherwise a licensed dealer in alcoholic beverages, lawfully coming into possession of any alcoholic beverages as executor, administrator, trustee, or other fiduciary, as surety for or in payment of a debt, or as an insurer or its transferees or assigns for the salvage or liquidation of an insured casualty or damage or loss, may sell the beverages in one (1) lot or parcel to a duly licensed wholesale or retail dealer without qualifying as a dealer.

(b) However, immediately after taking possession of the alcoholic beverages, the person shall register with the Alcoholic Beverage Control Division and furnish a detailed list of the alcoholic beverages and post with the division a bond, in an amount the division deems sufficient to protect the state from any taxes due on the alcoholic beverages.

(c) The person shall pay to the division a registration fee of ten dollars (\$10.00), which fee shall permit the sale of only the alcoholic beverages detailed in the registration request.

(d) The fee shall be deposited to the credit of the general revenue of the State of Arkansas.

(e) Whenever any beer is to be sold pursuant to this section, which shall have been involved in a fire, wreck, or similar casualty, then each bottle, can, or container of beer shall be labeled or otherwise identified, under the supervision of the Alcoholic Beverage Control Board or its successor, as distress merchandise salvaged from a fire, wreck, or similar casualty.

History. Acts 1959, No. 463, §§ 1, 2; A.S.A. 1947, §§ 48-342, 48-343.

SUBCHAPTER 2 — ISSUANCE AND TERMS

SECTION.

- 3-4-201. Number of permits restricted.
- 3-4-202. City and county licenses and taxes.
- 3-4-203. [Repealed.]
- 3-4-204. When permits may not be issued.
- 3-4-205. Interest in other permits prohibited — Exceptions.
- 3-4-206. Operation of retail liquor business near church or school-house prohibited.
- 3-4-207. Ineligible persons.
- 3-4-208. Applications — Procedure for acceptance and determination.
- 3-4-209. Applications — Contents.
- 3-4-210. Applications — Notice requirements.

SECTION.

- 3-4-211. Applications — Protests.
- 3-4-212. Applications — Denial.
- 3-4-213. Applications — Appeals.
- 3-4-214. Contents of permits.
- 3-4-215. [Repealed.]
- 3-4-216. Renewal.
- 3-4-217. Transfer or assignment.
- 3-4-218. Permits restricted to permitted premises.
- 3-4-219. Fees — Duration.
- 3-4-220. Duplicate permits.
- 3-4-221. Transfer of permitted location.
- 3-4-222. Reapplication.
- 3-4-223. Diversity in ownership and financial interest.

A.C.R.C. Notes. Acts 2007, No. 668, § 4, provided: "In the event that this act, or any part thereof, is determined by a court to be unconstitutional, this act shall become void and all wines, including native wines, distributed for sale in the State of Arkansas shall be distributed under § 3-2-401 et seq. and sold by licensed retailers under § 3-4-201 et seq."

Cross References. Licenses and permits, removal of disqualification for criminal offenses, § 17-1-103.

Vinous, spirituous and malt liquors defined, § 3-1-102.

Effective Dates. Acts 1935, No. 108, Art. 10: approved Mar. 16, 1935. Emergency clause provided: "Whereas, the repeal of the Eighteenth Amendment to the Constitution of the United States has created an emergency which requires immediate control of intoxicating liquors; and

"Whereas, the present state revenue does not meet the needs for the maintenance and development of the State Government and its agencies and the state's credit is threatened with impairment, an emergency is declared to exist and this act shall become a law and be effective on its passage and approval or nonaction by the Governor."

Acts 1937, No. 80, § 3: approved Feb. 13, 1937. Emergency clause provided: "Whereas, the Arkansas Alcoholic Control

Act makes no provision for revenue for second class cities and incorporated towns, and whereas, the control and policing of the sale of liquor in those municipalities is burdensome and expensive, an emergency is declared to exist and this act shall become a law and be in full force and effect from and after its passage."

Acts 1967, No. 336, § 4: emergency failed to pass.

Acts 1983, No. 420, § 3: Mar. 13, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that permits issued by the Alcoholic Beverage Control Division should be renewable annually no later than August 31; and that this act is immediately necessary to so provide. Therefore, an emergency is hereby declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1983, No. 675, § 8: Mar. 22, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that the Alcoholic Beverage Control Division should be authorized to retain ½ of the application permit fees in instances where the permits are denied in order to partially defray the cost of reviewing the permit application and this act is necessary to authorize the same.

Therefore, an emergency is hereby declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1983, No. 812, § 4: emergency declared but held unconstitutional in *Marshall v. Singleton*, 282 Ark. 167, 666 S.W.2d 399 (1984).

Acts 1991, No. 606, § 14: July 1, 1991. Emergency clause provided: "It is hereby found and determined that numerous persons who are resident aliens of the United States desire to operate establishments that dispense alcoholic beverages in the State of Arkansas and that the same are presently prohibited from obtaining a license in their name. It is further found and determined that the requirement of United States citizenship in order to maintain these establishments poses a burden upon commerce and restricts the number of persons who are able to contribute to the overall economy of the State of Arkansas. It is further found and determined that numerous national corporations are hindered in their operations in that they cannot have newly transferred managers or other key employees assume positions of responsibility within their local outlets since those persons do not meet the two (2) year residency requirement and that such requirement poses an unreasonable burden on the conduct of business in this state as it relates to alcohol beverage outlets. It is further found that the present process of applying for or renewing ABC licenses by requiring proof of payment of personal property taxes is cumbersome, unnecessary, and has no direct relationship to the operation of the ABC permitted outlet. It is further found and determined that there are presently numerous conflicting requirements which

are applied to applicants for various retail licenses issued by the state ABC Division and that it is necessary and proper that such permit requirements be made uniform. That all of the aforementioned encumbrances are a burden on the transaction of commerce in the state and upon the efficient administration of government in the state. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect on and after July 1, 1991."

Acts 1997, No. 519, § 5: Mar. 13, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that certain areas of the state are bombarded by continual applications for permits to sell alcoholic beverages after the permit has been denied; that subsequent applications are by persons or entities that were a real party in interest in the original application and that it is necessary to have a cooling-off period between applications in such instances; that it is necessary for the tranquillity and stability of those neighborhoods to modify the law to establish more reasonable application procedures; and that this act will accomplish that purpose and should go into effect as soon as possible. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Stafford, Separation of Powers and Arkansas Administrative Agencies: Distinguishing Ju-

dicial Power and Legislative Power, 7 U. Ark. Little Rock L.J. 279.

3-4-201. Number of permits restricted.

(a) It is declared to be the public policy of the state that the number of permits in this state to dispense vinous (except wines), spirituous, or malt liquor shall be restricted.

(b)(1) The Alcoholic Beverage Control Board is empowered to determine whether public convenience and advantage will be promoted by issuing the permits and by increasing or decreasing the number thereof.

(2) In order to further carry out the policy hereinbefore declared, the number of permits so issued shall be restricted.

(c) The board is further given the discretion to determine the number of permits to be granted in each county of this state or within the corporate limits of any municipality of this state to determine the location thereof and the persons to whom they shall be issued, under the following conditions:

(1)(A) The number of permits allowing the off-premises sale of vinous (except wines), spirituous, or malt liquor in any county or political subdivision which permits the sale shall not exceed a ratio of one (1) permit for every four thousand (4,000) population residing in that county or subdivision.

(B) Population of the area involved shall be determined by the most recent population figures established in a census by the Bureau of the Census of the United States Department of Commerce or other appropriate governmental subdivision;

(2) New permits which may be issued in a county or subdivision thereof following a regular census shall be issued under the following restrictions:

(A) Additional permits may be issued on a ratio of one (1) for every additional four thousand (4,000) population within the area;

(B) Any qualified applicant may apply for a permit. Qualifications are to be set from time to time by the board and its determination of the public convenience and advantage;

(3)(A) If it is determined that a county or political subdivision thereof is entitled to additional permits when warranted by a census, the board will announce prior to the last date for applications the number of new permits, if any, which may be issued therein.

(B) In the event that such regular census population figures decline in a given county or political subdivision thereof, no existing permits shall be cancelled or revoked for that reason, and the quota ratio shall not be applied thereto until the population in the county or political subdivision thereof reaches a number equalling one (1) permit to every four thousand (4,000) population therein, nor shall any new permit be issued therein until the population warrants.

(C) No transfer of locations from one county to another county shall be allowed.

(D) In the event that any holder of a permit for the sale of vinous (except wines), spirituous, or malt liquor surrenders a permit in a

county or municipality thereof where the ratio no longer meets the one to four thousand (1:4,000) requirement, no new applications will be accepted until that ratio is reestablished at an approved census;

(4)(A)(i) In the event a permit holder does not conduct business under any permit issued for a period of more than thirty (30) days, the permit shall be surrendered to the director and shall be placed on inactive status.

(ii) The permit may remain inactive for six (6) months or until the permit holder notifies the director that he or she is ready to resume business, whichever is longer.

(B) To secure the return of the permit, the permit holder shall file with the director a written statement showing:

- (i) That all taxes and fees owing to the state have been paid;
- (ii) The reason for the suspension of business activities; and
- (iii) The date business activity will resume.

(C)(i) The permit holder may petition the board for an extension of inactive status for an additional six-month period.

(ii) The board may grant an initial extension upon a showing by the permit holder and a finding by the board that business circumstances exist to justify an extension, that the delay to return to business was not due to mere deferral or inattention on the part of the permit holder, and that the inactive status should be extended.

(iii)(a) The permit holder may appeal to the board for a second extension of inactive status for an additional six-month period, but only upon a showing by the permit holder and a finding by the board that emergency circumstances exist to justify a final extension.

(b) "Emergency circumstances" are those delays in return to business which are beyond the control, planning, or foresight of the permit holder, including, but not limited to, delays due to natural disasters, pending court actions, building construction problems, and contested insurance claims.

(D) Any permit remaining on inactive status for a period of more than eighteen (18) months or which has not been granted an extension under the provisions of this subdivision shall expire; and

(5) Nothing in this section and §§ 3-4-202 and 3-4-208, except a permit on inactive status for more than eighteen (18) months after the provisions of subdivision (c)(4) of this section become effective or which has expired in accordance with subdivision (c)(4) of this section, shall be construed as to divest any permit holder holding the permit on July 1, 1991, regardless of the quota ratio, of his permit. In counties or municipalities which have a ratio lower than the quota ratio established herein, the permit holder shall be allowed to continue under subdivision (3)(B) of this subsection.

(d) The provisions of this section shall apply only to applications for permits to dispense vinous (except wines), spirituous, or malt liquor filed with the board after July 1, 1991.

History. Acts 1935, No. 108, Art. 3, § 1; 1937, No. 80, § 1; Pope's Dig., § 14106; Acts 1955, No. 360, § 1; 1983, No. 812, § 1; A.S.A. 1947, § 48-301; Acts 1991, No. 714, § 1; 1991, No. 1179, § 1; 1993, No. 779, § 2.

Publisher's Notes. Acts 1935, No. 108, Art. 1, § 6, provides that the exclusion of wines from the provisions of Acts 1935, No. 108 is intended to exclude only wines or vinous liquors manufactured in the State of Arkansas.

CASE NOTES

ANALYSIS

Constitutionality of Emergency Clause.
Discretion of Board and Director.
Factors Considered.
Grant or Denial of Permits.
Inactive Permits.
New Permits.
On-Premises Consumption.
Public Convenience and Advantage.
Trial De Novo.

Constitutionality of Emergency Clause.

The effect of Acts 1983, No. 812 which amended this section was to establish a special privilege for people residing in the more populous counties, to the exclusion of others; therefore, the emergency clause appended to that act was unconstitutional under Ark. Const. Amend. 7, which prohibits emergencies in acts granting special privileges. *Marshall v. Singleton*, 282 Ark. 167, 666 S.W.2d 399 (1984).

Discretion of Board and Director.

Action of the Commissioner of Revenues (now the Alcoholic Beverage Control Board) in refusing to grant a retail permit in a certain area is discretionary and when not arbitrary or discriminatory cannot be controlled by mandamus. *Hardin v. Cassinelli*, 204 Ark. 1016, 166 S.W.2d 258 (1942).

The Director of the Alcoholic Beverage Control Division and the Alcoholic Beverage Control Board are given broad discretionary powers to decide the number of permits and to issue them only when it is determined that public convenience and advantage would be promoted. *Carder v. Hemstock*, 5 Ark. App. 115, 633 S.W.2d 384 (1982); *Arkansas ABC Bd. v. Muncrief*, 308 Ark. 373, 825 S.W.2d 816 (1992).

The "public convenience and advantage" language of this section invests the Alcoholic Beverage Control Board with much discretionary leeway in deciding whether to approve an application for a

transfer of a retail liquor outlet, and therefore where substantial evidence supports the board's decision, the Supreme Court must defer to the board's expertise and experience. *Fayetteville School Dist. No. 1 v. Alcoholic Beverage Control Bd.*, 279 Ark. 89, 648 S.W.2d 804 (1983).

Factors Considered.

Factors to be considered by the Alcoholic Beverage Control Board before issuing a permit to operate a private club include: (1) the number and types of alcoholic permits in the area; (2) economic impact; (3) traffic hazards; (4) remoteness of the area; (5) degree of law enforcement available; (6) input from law enforcement or other public officials in the area; and (7) comments from area residents in opposition or support of the permit. *Moore v. King*, 56 Ark. App. 21, 937 S.W.2d 677 (1997).

In finding that the area was adequately served by the existing liquor stores nearby, the board was entitled to rely on the opinion of area residents and public officials that the existing liquor stores already served the public convenience, obviating the need for another. *Vallaroutto v. Alcoholic Bev. Control Bd.*, 81 Ark. App. 318, 101 S.W.3d 836 (2003).

Grant or Denial of Permits.

The failure to grant any permits in a city during a period of 12 years was not in and of itself arbitrary, where there was no evidence to indicate that the board had systematically denied applications in the area or even that such applications had been made. *Carder v. Hemstock*, 5 Ark. App. 115, 633 S.W.2d 384 (1982).

Even if the board could or should have found that due to economic expansion an additional outlet was desirable, it was not required to grant a particular application for a specific location where the board found the location would disadvantage not only those utilizing the facility but the general public. *Carder v. Hemstock*, 5 Ark. App. 115, 633 S.W.2d 384 (1982).

Board's decision denying permit was supported by substantial evidence. *Johnson v. Arkansas ABC Bd.*, 6 Ark. App. 366, 642 S.W.2d 335 (1982).

There was substantial evidence to support board's action granting permit. *Green v. Carder*, 282 Ark. 239, 667 S.W.2d 660 (1984).

Denial of application upheld, where predicated on the fact that the proposed location was unsuitable for transfer of the liquor and beer permits. *Edwards v. ABC Div. Bd.*, 307 Ark. 245, 819 S.W.2d 271 (1991).

Inactive Permits.

The 1993 amendment of this section set forth detailed procedures for the ABC to use in handling inactive permits; nothing in the amendment is inconsistent with the implementation of ABC Reg. § 1.80. *Blann v. ABC Bd.*, 317 Ark. 97, 876 S.W.2d 258 (1994).

New Permits.

The term "new permits" in subdivision (c)(2) of this section applies to a permit which increases the overall number of permits. *Blann v. ABC Bd.*, 317 Ark. 97, 876 S.W.2d 258 (1994).

On-Premises Consumption.

Under this section no provision is made for dispensing liquors at retail for on-premises consumption and the issuance of such permits by the Alcoholic Beverage Control Board was unauthorized by law and invalid. *Hinton v. State ex rel. Purcell*, 246 Ark. 341, 438 S.W.2d 57 (1969).

Public Convenience and Advantage.

There was not substantial evidence on the record to support a finding that the public convenience and advantage would not be served by issuance of retail liquor permit under this section. *Snyder v. Alcoholic Beverage Control Board*, 1 Ark. App. 92, 613 S.W.2d 126 (1981).

Mere numbers of persons being either for or against the issuance of retail liquor permits is of no significance under this section and is insufficient to allow the board to conclude that the granting of permits would not be to the public convenience and advantage. *Stringfellow v. Al-*

coholic Beverage Control Bd., 3 Ark. App. 124, 623 S.W.2d 213 (1981).

As security and public safety are factors to be considered in determining whether public convenience and advantage are to be promoted, the board properly considered testimony regarding the difficulty of police protection at a specific location. *Carder v. Hemstock*, 5 Ark. App. 115, 633 S.W.2d 384 (1982).

The words "public convenience and advantage" should not be restricted to a colloquial sense as synonymous with "handy or easy of access" but construed in that sense which connotes suitable and fitting to supply the public needs to the public advantage. *Carder v. Hemstock*, 5 Ark. App. 115, 633 S.W.2d 384 (1982); *Arkansas ABC Bd. v. Muncrief*, 308 Ark. 373, 825 S.W.2d 816 (1992).

The reference to the "public convenience and advantage" in this section means that the interest of the general public is to be considered, not merely that of the applicant. *Fayetteville School Dist. No. 1 v. Alcoholic Beverage Control Bd.*, 279 Ark. 89, 648 S.W.2d 804 (1983); *Arkansas ABC Bd. v. Muncrief*, 308 Ark. 373, 825 S.W.2d 816 (1992).

The number of persons who object to, or support, the issuance of retail liquor permits is not significant under the statute; the reasons for the support or opposition may be very significant. *Arkansas ABC Bd. v. Muncrief*, 308 Ark. 373, 825 S.W.2d 816 (1992).

Trial De Novo.

Former provision authorizing the circuit court in a trial de novo to redetermine or disregard the factual base upon which the Alcoholic Beverage Control Board relied to issue a liquor license was unconstitutional because such a trial sanctioned judicial encroachment into an area constitutionally reserved to the executive branch of government in the exercise of its executive discretion pursuant to this section. *Goodall v. Williams*, 271 Ark. 354, 609 S.W.2d 25 (1980).

Cited: *Arkansas ABC Bd. v. King*, 275 Ark. 308, 629 S.W.2d 288 (1982); *Westerman v. Singleton*, 9 Ark. App. 120, 653 S.W.2d 152 (1983); *Marshall v. ABC Bd.*, 15 Ark. App. 255, 692 S.W.2d 258 (1985).

3-4-202. City and county licenses and taxes.

(a) The Alcoholic Beverage Control Board in exercising its discretionary power shall give due regard to the ordinances and regulations of the counties and municipalities of this state.

(b) All municipal corporations may license and tax the manufacture and sale of vinous (except wines), spirituous, or malt liquors by the permittees so authorized by the board. However, the municipal license fee shall not exceed an amount equal to one-half (½) of the license fee collected by the board for the State of Arkansas.

(c) Nothing in this act shall be construed to prevent the county court from licensing the sale and manufacture of vinous (except wines), spirituous, or malt liquors by the permittees so authorized by the board, provided that the premises permitted are located outside the limits of a municipal corporation but within the county in which the county court is located. However, the license fee collected by the county court shall not exceed the amount equal to one-half (½) of the license fee collected by the board for the State of Arkansas.

(d) No county license fee shall be collected from any permittee where the premises permitted are located within the limits of a municipal corporation.

(e) No permittee shall be required to pay both a city and a county license fee for the same premises permitted by the board.

(f) Nothing in this act shall be construed to prevent the prohibition of the manufacture and sale by means of local option elections as authorized by law.

(g)(1) The city clerk or county clerk charged with the duty of collecting the license fee shall notify the board of the identity of retailers failing to comply with the provisions of this section.

(2) The board shall then notify wholesale dealers to discontinue sales to the delinquent retailers.

(3) When the license fee is paid, the appropriate clerk shall notify the board that the retailer has paid the fee.

(4) The board shall notify wholesalers to resume sales to the retailers.

(5) Any wholesaler who continues to sell to a retailer after notification from the board to discontinue the sales shall be subject, upon conviction, to a fine of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000).

(h) The provisions of this section shall apply only to applications for permits to dispense vinous (except wines), spirituous, or malt liquor filed with the board after July 4, 1983.

History. Acts 1935, No. 108, Art. 3, § 1; 1937, No. 80, § 1; Pope's Dig., § 14106; Acts 1955, No. 360, § 1; 1983, No. 812, § 1; A.S.A. 1947, § 48-301.

Publisher's Notes. For exclusion of wines, see Publisher's Notes to § 3-4-201.

Meaning of "this act". Acts 1935, No.

108, codified as §§ 3-1-101 — 3-1-103, 3-2-101, 3-2-205, 3-3-101 — 3-3-103, 3-3-212, 3-3-401, 3-3-404, 3-3-405, 3-4-101 — 3-4-103, 3-4-201, 3-4-202, 3-4-207 — 3-4-211, 3-4-213, 3-4-214, 3-4-215 [repealed], 3-4-217, 3-4-219, 3-4-220, 3-4-301 — 3-4-303, 3-4-501, 3-4-503, 3-4-601 — 3-4-605,

3-8-301 — 3-8-311, 3-8-313 — 3-8-317,
23-12-708.

CASE NOTES

Constitutionality of Emergency Clause.

The effect of Acts 1983, No. 812 which amended this section is to establish a special privilege for people residing in the more populous counties, to the exclusion of others; therefore, the emergency clause appended to that act is unconstitutional under Ark. Const. Amend. 7, which pro-

hibits emergencies in acts granting special privileges. *Marshall v. Singleton*, 282 Ark. 167, 666 S.W.2d 399 (1984).

Cited: *Arkansas ABC Bd. v. King*, 275 Ark. 308, 629 S.W.2d 288 (1982); *Westerman v. Singleton*, 9 Ark. App. 120, 653 S.W.2d 152 (1983); *Marshall v. ABC Bd.*, 15 Ark. App. 255, 692 S.W.2d 258 (1985).

3-4-203. [Repealed.]

Publisher's Notes. This section, concerning tax receipts as a prerequisite to issuance, was repealed by Acts 1991, No.

606, § 10. The section was derived from Acts 1959, No. 40, § 1; 1961, No. 172, § 1; A.S.A. 1947, § 48-344.

3-4-204. When permits may not be issued.

(a) It shall be unlawful for the Alcoholic Beverage Control Board to grant or authorize the granting of any new retailer's permit to sell and dispense vinous or spirituous liquors for beverage purposes at retail, or to authorize the transfer of any permit previously issued, at any time during the last thirty (30) days of any even-numbered year and prior to January 15 of each odd-numbered year.

(b) As used in this section, the term "retailer's permit" means any permit issued pursuant to this chapter to sell or dispense vinous or spirituous liquors for beverage purposes at retail.

(c) Any violations of the provisions of this section by any members, officers, or employees of the board shall be grounds for dismissal therefrom. In addition, any violation shall be punished by a fine of not less than one thousand dollars (\$1,000) nor more than ten thousand dollars (\$10,000) and imprisonment for not less than six (6) months nor more than one (1) year.

History. Acts 1967, No. 336, § 1; A.S.A. 1947, § 48-310.1.

3-4-205. Interest in other permits prohibited — Exceptions.

(a) For purposes of this section, the term "vested permits" is defined as those multiple retail liquor permits which were lawfully issued to any person, firm, or corporation prior to July 19, 1971.

(b)(1) No retail liquor permit shall be issued, either as a new permit or as a replacement of an existing permit, to any person, firm, or corporation if the person, firm, or corporation has any interest in another retail liquor permit, regardless of the degree of interest.

(2) However, notwithstanding this prohibition, any retail liquor permits held by any person, firm, or corporation on July 19, 1971, which continue to be held by any person, firm, or corporation having such interest in more than one (1) such retail liquor permit on August 13, 1993, shall be vested permits.

(c)(1) Holders of vested permits may not sell, convey, assign, or devise any such interest in multiple retail liquor permitted businesses to any person or persons, firm, or corporation which, on the date of any such transfer, already has any ownership interest in a permitted retail liquor business.

(2) However, holders of vested permits shall be allowed to sell, convey, assign, or devise any such interest in multiple retail liquor permitted businesses to any other person or persons, firm, or corporation, thereby creating an ownership interest in more than one (1) retail liquor permit to any such subsequent purchasers, assignees, or devisees without violating any of the provisions hereinabove.

History. Acts 1971, No. 106, § 2; A.S.A. 1947, § 48-310.2; Acts 1993, No. 433, § 1.

Publisher's Notes. Acts 1993, No. 433, § 2 provided: "It is the intent of this act to grant to those holders of vested multiple

retail liquor permits the same rights and privileges as holders of single retail liquor permits regarding the sale, conveyance, assignment or devise of such permitted businesses."

CASE NOTES

Replacement Permits.

Transfer of a liquor permit covering one location to a permit covering a new location was held to be a violation of this

section being, in effect, a replacement permit. *Hewitt v. Gage*, 257 Ark. 579, 519 S.W.2d 749 (1975).

3-4-206. Operation of retail liquor business near church or schoolhouse prohibited.

(a) No new permit to engage in the retail liquor business in this state shall be issued by the Director of the Alcoholic Beverage Control Division for the location of any business situated within two hundred (200) yards of any church or schoolhouse.

(b) However, after August 13, 2001:

(1) No new permit to engage in the retail liquor business in this state may be issued by the director for the location of any business situated within one thousand feet (1,000') of any church or schoolhouse; and

(2)(A) No existing permit to engage in the retail liquor business in this state may be transferred to a location within one thousand feet (1,000') of any church or schoolhouse.

(B) As an exception to subdivision (b)(2)(A) of this section, if any retail liquor business in this state already exists within one thousand feet (1,000') of one (1) or more churches or schoolhouses, then that same retail liquor store may be allowed to transfer to a new location that is within one thousand feet (1,000') of the closest church or schoolhouse to the present liquor store location if the new location is

determined by the Alcoholic Beverage Control Division to serve the public convenience and advantage.

History. Acts 1975, No. 699, § 1; A.S.A. 1947, § 48-345; Acts 2001, No. 1072, § 1.

CASE NOTES

ANALYSIS

Construction.
Grant or Denial of Permit.
Private Clubs.
Waiver.

Construction.

The language of this section is obviously applicable to the retail liquor business and complements § 3-4-604. When the two statutes are read together it is obvious that the legislature intended to prevent retail “package” stores from operating within 200 yards of a school or church building. *Rowell v. Austin*, 276 Ark. 445, 637 S.W.2d 531 (1982).

The word “church” means the place where a body of people or worshipers associate together for religious purposes; in a statute or regulation, the word is to be given its usual and ordinary meaning. *Arkansas ABC Div. v. Person*, 309 Ark. 588, 832 S.W.2d 249 (1992).

Grant or Denial of Permit.

Fact that the A.B.C. Board granted a permit for another retail liquor business to locate within 200 yards of a church in

violation of this section did not make the action of the board arbitrary when it refused to approve a similar location, since it is not arbitrary for a governmental agency to refuse to make the same error twice. *Arkansas ABC Div. v. Person*, 309 Ark. 588, 832 S.W.2d 249 (1992).

Private Clubs.

The prohibition of this section would not apply to the transfer of a private club permit for dispensation of alcoholic beverages by the drink or in broken or unsealed containers for consumption on the premises. *Jones v. Reed*, 267 Ark. 237, 590 S.W.2d 6 (1979).

Regulations may differentiate between “package” stores and private clubs. *Arkansas ABC Div. v. Person*, 309 Ark. 588, 832 S.W.2d 249 (1992).

Waiver.

Waiver of this section by a church is ineffective since the section expresses the public policy of this state, and a waiver by a church congregation does not change the state’s public policy. *Arkansas ABC Div. v. Person*, 309 Ark. 588, 832 S.W.2d 249 (1992).

3-4-207. Ineligible persons.

No person described in this section shall receive a permit:

- (1) A person who has been convicted of a felony;
- (2) A person under the age of twenty-one (21) years;
- (3) A person who is not a citizen or resident alien of the United States;
- (4) A copartnership, unless all members of such copartnership are citizens or resident aliens of the United States;
- (5) A person who shall have had his or her permit issued under this act revoked for cause or who has been convicted of a violation of this act until the expiration of two (2) years from the date of such revocation or conviction; or
- (6) A corporation or copartnership, if any of its officers or members have been convicted of a violation of this act or have had a permit issued under this act revoked for cause until two (2) years from the date of the conviction or revocation.

History. Acts 1935, No. 108, Art. 3, § 11; Pope's Dig., § 14115; Acts 1945, No. 239, § 1; A.S.A. 1947, § 48-314; Acts 1991, No. 606, § 1; 1995, No. 652, § 8.

Publisher's Notes. Subdivision (1) of this section may be superseded by § 17-1-103 which provides for the removal of an automatic disqualification for criminal

convictions in obtaining permits and licenses for professions, trades, or occupations.

As to legislative intent of Acts 1991, No. 606, see note to § 3-4-203.

Meaning of "this act". See note to § 3-4-202.

3-4-208. Applications — Procedure for acceptance and determination.

(a) Applications for new permits will be accepted by the Alcoholic Beverage Control Division after the publication of new census figures if the applications are warranted within a county or subdivision thereof.

(b) When it has been determined that new applications are appropriate, the division shall notify the public at large by legal notice that it will be accepting applications for a particular county or political subdivision thereof.

(c) Applications will then be accepted from the affected area beginning thirty (30) days after the date of publication, and no applications will be accepted after ninety (90) days of the publication date.

(d) All applications received from the affected area will then be processed and set for a Alcoholic Beverage Control Board meeting. The board meeting shall not be earlier than one hundred fifty (150) days after the publication of the legal notice specified in subsection (b) of this section, nor later than one hundred eighty (180) days after publication.

(e) No later than fifteen (15) days prior to the hearing, each applicant for a new permit or his or her agent will be allowed to draw a number between one (1) and a number equal to the number of applicants having filed. The drawing will be conducted by the Director of the Alcoholic Beverage Control Division. Position numbers may not be assigned or transferred.

(f) At the meeting the applications will be heard in order of the numbers drawn. There will only be as many applications heard as will equal the number of new permits allowed in the county or subdivision thereof.

(g)(1) If the board finds that an applicant is qualified and that his or her proposed premises meet the public convenience and advantage of the area in question, then in that event the application will be approved.

(2) No permit will issue earlier than thirty (30) days subsequent to the determination or until such time as the board determines it is necessary for final adjudication in the Arkansas courts, of any appeals arising out of such determinations, whichever is longer.

(h) If the board has denied an application and the decision is not appealed or is upheld on appeal, then additional hearings will be held according to numbers already assigned in accordance with this section.

(i) There shall be an initial application fee of two thousand dollars (\$2,000). In the event an applicant is not successful in his or her

application, one thousand dollars (\$1,000) of that sum shall be refunded.

(j) The annual permit renewal fee for permits authorized by this section and §§ 3-4-201 and 3-4-202 will be the same as the renewal fee provided by §§ 3-4-604 and 3-7-111(a)(1)(D), or any subsequent amendments thereto.

(k) The provisions of this section shall apply only to applications for permits to dispense vinous (except wines), spirituous, or malt liquor filed with the board after July 4, 1983.

History. Acts 1935, No. 108, Art. 3, § 1; Acts 1955, No. 360, § 1; 1983, No. 812, 1937, No. 80, § 1; Pope's Dig., § 14106; § 1; A.S.A. 1947, § 48-301.

CASE NOTES

ANALYSIS

Constitutionality of Emergency Clause.
Discretion of Board and Director.
Evidence.
Findings.
Grant or Denial of Permits.
On-Premises Consumption.
Public Convenience and Advantage.
Trial De Novo.

Constitutionality of Emergency Clause.

The effect of Acts 1983, No. 812 which amended this section is to establish a special privilege for people residing in the more populous counties, to the exclusion of others; therefore, the emergency clause appended to that act is unconstitutional under Ark. Const. Amend. 7, which prohibits emergencies in acts granting special privileges. *Marshall v. Singleton*, 282 Ark. 167, 666 S.W.2d 399 (1984).

Discretion of Board and Director.

Action of the Commissioner of Revenues (now the Alcoholic Beverage Control Board) in refusing to grant a retail permit in a certain area is discretionary and when not arbitrary or discriminatory cannot be controlled by mandamus. *Hardin v. Cassinelli*, 204 Ark. 1016, 166 S.W.2d 258 (1942).

The Director of the Alcoholic Beverage Control Division and the Alcoholic Beverage Control Board are given broad discretionary powers to decide the number of permits and to issue them only when it is determined that public convenience and advantage would be promoted. *Carder v. Hemstock*, 5 Ark. App. 115, 633 S.W.2d 384 (1982).

The "public convenience and advantage" language of this section invests the Alcoholic Beverage Control Board with much discretionary leeway in deciding whether to approve an application for a transfer of a retail liquor outlet, and therefore where substantial evidence supports the board's decision, the Supreme Court must defer to the board's expertise and experience. *Fayetteville School Dist. No. 1 v. Alcoholic Beverage Control Bd.*, 279 Ark. 89, 648 S.W.2d 804 (1983).

Evidence.

Judging both the credibility of witnesses and the proper weight to be accorded evidence presented to the board is within the board's domain. *Carder v. Hemstock*, 5 Ark. App. 115, 633 S.W.2d 384 (1982).

While hearsay standing alone is not substantial evidence, it may be considered by the board in reaching its determination if supportive of other nonhearsay evidence. The weight to be given such evidence is for the board to determine. *Carder v. Hemstock*, 5 Ark. App. 115, 633 S.W.2d 384 (1982).

As security and public safety are factors to be considered in determining whether public convenience and advantage are to be promoted, the board properly considered testimony regarding the difficulty of police protection at a specific location. *Carder v. Hemstock*, 5 Ark. App. 115, 633 S.W.2d 384 (1982).

Findings.

The board was not required to find that the issuance of a new permit would have an adverse effect on any existing permit; it

was required to find only whether the issuance of the additional permit in this area would "promote the public convenience and advantage." *Carder v. Hemstock*, 5 Ark. App. 115, 633 S.W.2d 384 (1982).

Grant or Denial of Permits.

The failure to grant any permits in a city during a period of 12 years was not in and of itself arbitrary, where there was no evidence to indicate that the board had systematically denied applications in the area or even that such applications had been made. *Carder v. Hemstock*, 5 Ark. App. 115, 633 S.W.2d 384 (1982).

Even if the board could or should have found that due to economic expansion an additional outlet was desirable, it was not required to grant a particular application for a specific location where the board found the location would disadvantage not only those utilizing the facility but the general public. *Carder v. Hemstock*, 5 Ark. App. 115, 633 S.W.2d 384 (1982).

Board's decision denying permit was supported by substantial evidence. *Johnson v. Arkansas ABC Bd.*, 6 Ark. App. 366, 642 S.W.2d 335 (1982).

There was substantial evidence to support board's action granting permit. *Green v. Carder*, 282 Ark. 239, 667 S.W.2d 660 (1984).

On-Premises Consumption.

Under this section no provision is made for dispensing liquors at retail for on-premises consumption and the issuance of such permits by the Alcoholic Beverage Control Board was unauthorized by law and invalid. *Hinton v. State ex rel. Purcell*, 246 Ark. 341, 438 S.W.2d 57 (1969).

Public Convenience and Advantage.

There was not substantial evidence on the record to support a finding that the public convenience and advantage would

not be served by issuance of retail liquor permit under this section. *Snyder v. Alcoholic Beverage Control Board*, 1 Ark. App. 92, 613 S.W.2d 126 (1981).

Mere numbers of persons being either for or against the issuance of retail liquor permits is of no significance under this section and is insufficient to allow the board to conclude that the granting of permits would not be to the public convenience and advantage. *Stringfellow v. Alcoholic Beverage Control Bd.*, 3 Ark. App. 124, 623 S.W.2d 213 (1981).

The words "public convenience and advantage" should not be restricted to a colloquial sense as synonymous with "handy or easy of access" but construed in that sense which connotes suitable and fitting to supply the public needs to the public advantage. *Carder v. Hemstock*, 5 Ark. App. 115, 633 S.W.2d 384 (1982).

The reference to the "public convenience and advantage" in this section means that the interest of the general public is to be considered, not merely that of the applicant. *Fayetteville School Dist. No. 1 v. Alcoholic Beverage Control Bd.*, 279 Ark. 89, 648 S.W.2d 804 (1983).

Trial De Novo.

Former provision authorizing the circuit court in a trial de novo to redetermine or disregard the factual base upon which the Alcoholic Beverage Control Board relied to issue a liquor license was unconstitutional because such a trial sanctioned judicial encroachment into an area constitutionally reserved to the executive branch of government in the exercise of its executive discretion pursuant to this section. *Goodall v. Williams*, 271 Ark. 354, 609 S.W.2d 25 (1980).

Cited: *Arkansas ABC Bd. v. King*, 275 Ark. 308, 629 S.W.2d 288 (1982); *Westerman v. Singleton*, 9 Ark. App. 120, 653 S.W.2d 152 (1983); *Marshall v. ABC Bd.*, 15 Ark. App. 255, 692 S.W.2d 258 (1985).

3-4-209. Applications — Contents.

In addition to such other information as the Director of the Alcoholic Beverage Control Division may determine shall be furnished in any application for permits under this act, the following information shall be given under oath:

(1) The name, age, and residence of each applicant and, if there are more than one (1) and they are partners, the partnership name and

residence of the several persons so applying and the facts as to his or her or their citizenship;

(2) The name and residence of each person interested, or to become interested, in the business of any permittee for which the application is made, together with the nature of the interests. If the applicant is a corporation, the application shall set forth the name of the corporation, the names of its directors or other governing body, the names of its officers, and the state under the laws of which it is organized;

(3) That the premises to be permitted is identified by stating the street and number, if the premises has a street and number, and otherwise such apt description as will reasonably indicate the locality. The applicant shall also state the name of any other person, either as principal or associate, interested with the applicant either in the premises or in the business to be permitted;

(4) A statement that the applicant has not been convicted of a felony and has not had a permit issued to him, her, or them under this act revoked for cause within five (5) years preceding the date of application.

History. Acts 1935, No. 108, Art. 3, § 7; Pope's Dig., § 14111; Acts 1945, No. 239, § 1; 1967, No. 239, § 1; 1973, No. 189, § 1; A.S.A. 1947, § 48-311; Acts 1991, No. 606, § 2.

Publisher's Notes. Subdivision (4) of this section may be superseded as to

felony convictions by § 17-1-103. See Publisher's Notes to § 3-4-207.

As to legislative intent of Acts 1991, No. 606, see note to § 3-4-203.

Meaning of "this act". See note to § 3-4-202.

CASE NOTES

Private Clubs.

This section does not apply to transfer

of private club permits. *Jones v. Reed*, 267 Ark. 237, 590 S.W.2d 6 (1979).

3-4-210. Applications — Notice requirements.

(a)(1) After filing an acceptable application with the Director of the Alcoholic Beverage Control Division, the applicant shall cause to be published at least one (1) time a week for four (4) consecutive weeks in a legal newspaper of general circulation in the city in which the premises are situated or, if the premises are not in a city, in a newspaper of general circulation for the locality where the business is to be conducted, a notice that the applicant has applied for a permit to sell alcoholic beverages at retail.

(2) The notice shall be in such form as the director shall prescribe by rule or order and shall be verified.

(3) The notice shall give the names of the applicant and the business and shall state that the applicant is a resident of Arkansas, a citizen or resident alien of the United States, that he or she has good moral character, that he or she has never been convicted of a felony or had a license to sell alcoholic beverages revoked within the five (5) years preceding the date of notice, whether issued by this state or any other

state, and that he or she has not been convicted of violating laws of this state or any other state governing the sale of alcoholic beverages within five (5) years preceding the date of the notice.

(b)(1) Within five (5) days after filing an application for a permit to sell alcoholic beverages at retail at any premises, a notice of the application shall be posted in a conspicuous place at the entrance to the premises.

(2) The applicant shall notify the director of the date when notice is first posted.

(3) No permit shall be issued to any applicant until proper notice has been posted on the premises for at least thirty (30) consecutive days.

(4)(A) The notice shall be in such form as the director shall prescribe by rule or order.

(B) The notice shall be:

(i) At least eleven inches (11") in width and seventeen inches (17") in height; and

(ii) Printed in black lettering on a yellow background.

(c)(1) Upon receipt by the director of an application for a permit, written notice thereof, which shall include a copy of the application, the application shall immediately be mailed by the director to the sheriff, chief of police, if located within a city, and prosecuting attorney of the locality in which the premises are situated, and to the city board of directors or other governing body of the city in which the premises are situated, if within an incorporated area.

(2) No license shall be issued by the director until at least thirty (30) days have passed from the mailing by the director of the notices required by this section.

History. Acts 1935, No. 108, Art. 3, § 7; Pope's Dig., § 14111; Acts 1945, No. 239, § 1; 1967, No. 239, § 1; 1973, No. 189, § 1; A.S.A. 1947, § 48-311; Acts 1989, No. 297, § 2; 1991, No. 606, § 3; 1995, No. 652, § 11; 2007, No. 735, § 1.

Publisher's Notes. Subdivision (3) of this section may be superseded as to felony convictions by § 17-1-103. See Publisher's Notes to § 3-4-207.

As to legislative intent of Acts 1991, No. 606, see note to § 3-4-203.

Amendments. The 2007 amendment, in (a)(1), substituted "Director of the Alcoholic Beverage Control Division" for "director" and "four (4)" for "two (2)"; deleted "regulation" following "rule" in (a)(2) and (b)(4)(A); added (b)(4)(B) and made related changes; and inserted "the application" preceding "shall" in (c)(1).

CASE NOTES

Private Clubs.

This section does not apply to transfer

of private club permits. *Jones v. Reed*, 267 Ark. 237, 590 S.W.2d 6 (1979).

3-4-211. Applications — Protests.

Upon receipt by the Director of the Alcoholic Beverage Control Division within thirty (30) days of a protest against issuance of a permit by a governing official of the city or county to whom the notice of an

application for permit has been mailed, the director shall not issue the license until he or she has held a public hearing.

History. Acts 1935, No. 108, Art. 3, § 7; Pope's Dig., § 14111; Acts 1945, No. 239, § 1; 1967, No. 239, § 1; 1973, No. 189, § 1; 1981, No. 790, § 4; A.S.A. 1947, § 48-311; Acts 2007, No. 735, § 2.

Amendments. The 2007 amendment inserted "or she."

CASE NOTES

ANALYSIS

Continuances.
Private Clubs.

Continuances.

The board's statutory duty to hold a public hearing under this section carries with it the implied authority to interrupt the hearing when it is reasonable to do so; accordingly, the board had the power to

order a continuance on its own motion when an unforeseen question arose during the hearing. *Fayetteville School Dist. No. 1 v. Alcoholic Beverage Control Bd.*, 279 Ark. 89, 648 S.W.2d 804 (1983).

Private Clubs.

This section does not apply to transfer of private club permits. *Jones v. Reed*, 267 Ark. 237, 590 S.W.2d 6 (1979).

3-4-212. Applications — Denial.

(a) On all permit applications and administrative applications processed by the Alcoholic Beverage Control Division, in the event that any such application is denied, one-half ($\frac{1}{2}$) of the stated amount of fee will be retained by the State of Arkansas to cover the costs of investigation and administrative processing of applications.

(b) The remainder will be refunded to the applicant pursuant to established administrative procedures.

History. Acts 1983, No. 675, § 5; A.S.A. 1947, § 48-311.1.

3-4-213. Applications — Appeals.

Any appeal from an order of the Director of the Alcoholic Beverage Control Division or the Alcoholic Beverage Control Board shall be made to the circuit court of the county in which the premises are situated or the Pulaski County Circuit Court. Appeals shall be governed by the terms of the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

History. Acts 1935, No. 108, Art. 3, § 7; Pope's Dig., § 14111; Acts 1945, No. 239, § 1; 1967, No. 239, § 1; 1973, No. 189, § 1; 1981, No. 790, § 4; A.S.A. 1947, § 48-311.

CASE NOTES

ANALYSIS

Constitutionality.
Private Clubs.

Constitutionality.

Former provision of this section authorizing the circuit court in a trial de novo to redetermine or disregard the factual base upon which the Alcoholic Beverage Control Board relied to issue a liquor license was unconstitutional because such a trial sanctioned judicial encroachment into an

area constitutionally reserved to the executive branch of government in the exercise of its executive discretion pursuant to §§ 3-4-201, 3-4-202, and 3-4-208. *Goodall v. Williams*, 271 Ark. 354, 609 S.W.2d 25 (1980) (decision prior to 1981 amendment).

Private Clubs.

This section does not apply to transfer of private club permits. *Jones v. Reed*, 267 Ark. 237, 590 S.W.2d 6 (1979).

3-4-214. Contents of permits.

A permit shall contain, in addition to any further information or material to be prescribed by the rules and regulations of the Alcoholic Beverage Control Division, the following:

- (1) The name of the person to whom the permit is issued;
- (2) The kind of permit and what kind of traffic in vinous or spirituous or malt liquors is thereby permitted;
- (3) A description by street and number or otherwise of the permitted premises;
- (4) A statement in substance that the permit shall not be deemed a property or vested right and that it may be revoked at any time pursuant to law;
- (5) The name and address of the owner of the premises. Upon a change in the ownership, the permittee or the new owner may file notice to that effect in writing with the Director of the Alcoholic Beverage Control Division on forms to be provided by the director for that purpose.

History. Acts 1935, No. 108, Art. 3, § 9; Pope's Dig., § 14113; Acts 1953, No. 49, § 1; A.S.A. 1947, § 48-313.

3-4-215. [Repealed.]

Publisher's Notes. This section, concerning notice when permit issued, was repealed by Acts 1995, No. 652, § 9. The

section was derived from Acts 1935, No. 108, Art. 3, § 9; Pope's Dig., § 14113; Acts 1953, No. 49, § 1; A.S.A. 1947, § 48-313.

3-4-216. Renewal.

(a) All permits issued by the Alcoholic Beverage Control Division authorizing the dispensing, sale, or manufacture of alcoholic beverages are renewable on or before June 30 of each calendar year for the fiscal year beginning July 1.

(b) Any person holding a permit who desires to renew the permit after June 30 shall be required to pay a late renewal penalty in the

amount of one half (½) of the required yearly renewal fee for the permit for each sixty-day period, or any portion thereof, after June 30, wherein the renewal is tendered, in addition to the amount of the yearly fee.

(c) Division permits may be renewed late by paying the stated penalty beginning July 1 and ending October 28 of each fiscal year.

(d) No permit shall be renewed by the division for the current fiscal year after October 28.

(e) No permit or license issued by the Alcoholic Beverage Control Board to sell intoxicating liquor, beer, or any other form of alcoholic beverage shall be renewed by the division for a permit or license holder who is delinquent more than ninety (90) days on any alcoholic beverage sales tax, excise tax, supplemental mixed drink tax, or any other taxes relating to the sale or dispensation of alcoholic beverages, or any state and local gross receipts or compensating use taxes.

History. Acts 1983, No. 420, § 1; A.S.A. 1993, No. 779, § 3; 1997, No. 1010, § 1; 1947, § 48-313.1; Acts 1989, No. 300, § 1; 1997, No. 1060, § 1; 1999, No. 319, § 1.

3-4-217. Transfer or assignment.

(a) No permit shall be transferable or assignable.

(b) No permit shall be pledged or deposited as collateral security for any loan or upon any other condition. Any pledge or deposit and any contract providing therefor shall be void.

(c) A permit issued to any person, pursuant to this chapter, for any premises shall not be transferable to any other person or to any other premises or to any other part of the building containing the permitted premises. It shall be available only to the person therein specified and only for the premises permitted and no other.

History. Acts 1935, No. 108, Art. 3, §§ 8, 9; Pope's Dig., §§ 14112, 14113; Acts 1953, No. 49, § 1; A.S.A. 1947, §§ 48-312, 48-313.

CASE NOTES

ANALYSIS

Actions of Board.

Sale of Premises.

Actions of Board.

This section is a restriction on the permittee and not on any subsequent actions by the Alcoholic Beverage Control Board. *Smith v. Estes*, 259 Ark. 337, 533 S.W.2d 190 (1976).

Sale of Premises.

Although a permit is not transferable or assignable, a contract for the sale of a liquor store to nonresident purchasers was not illegal where purchasers knew at the time of the purchase that as nonresidents a liquor permit could not be transferred or issued to them. *Smith v. Ferguson*, 302 Ark. 388, 790 S.W.2d 162 (1990).

Cited: *Jones v. Reed*, 267 Ark. 237, 590 S.W.2d 6 (1979).

3-4-218. Permits restricted to permitted premises.

(a)(1) No new liquor permits shall be issued to nor shall any outstanding liquor permit be transferred to any person, firm, or corporation by the Alcoholic Beverage Control Division wherein the

permitted premises of the liquor permittee is operated as a part of the profit-making business of any drug, grocery, sporting goods, dry goods, hardware, or general mercantile store.

(2) However, the permittee may have tobacco products, mixers, soft drinks, and other items customarily associated with the retail package sale of the liquors.

(b) However, this restriction shall not prohibit the transfer of a permit by the division resulting from the sale of a business for which a permit was issued on or before February 18, 1971.

(c) It is further provided that in any instance where a retail liquor permit was issued after February 18, 1971, and the permitted premise is located outside an incorporated city or town and is located within five (5) miles of two (2) other liquor stores that were grandfathered in under the provisions of subsection (b) of this section, with each of the other stores being on either side of the newer liquor store, further where the newer liquor store and one (1) of the grandfathered liquor stores are both located in the same county and the second grandfathered liquor store is located in an adjoining county, and further where all three (3) subject liquor stores are located within one (1) mile of a federal interstate highway, then the middle liquor store may be considered as a grandfathered liquor store on the same basis as its competitors and may sell items which would not ordinarily be allowed if the permit were granted after February 18, 1971.

(d) The holder of a retail liquor permit, as defined in § 3-4-604, which is located in any city having a population of less than six hundred (600) persons and in a county having a population of less than sixteen thousand (16,000) persons according to the 2000 Federal Decennial Census and within three (3) miles of a river that serves as a common boundary between that county and another state shall be entitled, in addition to other privileges inherent under the permit, to sell food prepared on the licensed premises for off-premises consumption.

History. Acts 1971, No. 106, § 3; 1977, No. 798, § 1; A.S.A. 1947, § 48-310.3; Acts 1999, No. 1594, § 1; 2003, No. 848, § 1; 2007, No. 457, § 1.

Amendments. The 2007 amendment added (d), and made a stylistic change in (c).

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2003 Arkansas General Assembly, Alcoholic Beverages, 26 U. Ark. Little Rock L. Rev. 349.

CASE NOTES

Standing.

Liquor store retailers' association had standing under § 25-15-212(a) to challenge a decision of the Arkansas Alcoholic Beverage Control Board, which granted permits to a department store, based on

the association's claims of disparate treatment under this section and its members' inability to compete on an equal basis with the store. Ark. Bev. Retailers Ass'n v. Moore, — Ark. —, — S.W.3d —, 2007 Ark. LEXIS 286 (May 3, 2007).

Cited: Vallaroutto v. Alcoholic Bev. Control Bd., 81 Ark. App. 318, 101 S.W.3d 836 (2003).

3-4-219. Fees — Duration.

(a) Applications for permits shall be made for issuance only on January 1 or July 1 of each year.

(b) Licenses issued as of January 1 will require the payment of one-half ($\frac{1}{2}$) the annual permit fee and the amount shall attach and operate as a lien as set forth in subsection (e) of this section at the time the permit is issued.

(c) Each permit shall be issued for an indeterminate period, and the permit fees prescribed by the provisions of this act shall be paid annually in advance on or before June 30 of each calendar year for the fiscal year beginning July 1.

(d) Each permit issued pursuant to this act shall remain valid until revoked or suspended so long as the prescribed annual permit fee shall be paid as required by law.

(e) All permit or license fees shall attach to and operate as a lien on the property, on and in the permitted premises or elsewhere, belonging to the person from whom such fees are due.

History. Acts 1935, No. 108, Art. 3, § 9; Pope's Dig., § 14113; Acts 1953, No. 49, § 1; 1983, No. 420, § 1; A.S.A. 1947, §§ 48-313, 48-313.1.

Meaning of "this act". See note to § 3-4-202.

3-4-220. Duplicate permits.

Whenever a permit shall be lost or destroyed without fault on the part of the permittee or his or her agents or employees, a duplicate permit in lieu thereof may be issued by the Director of the Alcoholic Beverage Control Division in his or her discretion and in accordance with its rules and regulations, on payment of a fee of five dollars (\$5.00).

History. Acts 1935, No. 108, Art. 3, § 20; Pope's Dig., § 14125; A.S.A. 1947, § 48-320.

3-4-221. Transfer of permitted location.

The Alcoholic Beverage Control Board shall not authorize the transfer of a permit to dispense vinous (except wines), spirituous, or malt liquor from any location to a location within a city or town located within a county having a population of two hundred thousand (200,000) or more persons, according to the most recent federal decennial census, if the transfer of such permit to a location in the city or town will result in there being more than one (1) permitted location in the city or town for each four thousand (4,000) population in the city or town, according to the most recent federal decennial census.

History. Acts 1995, No. 861, § 1.

3-4-222. Reapplication.

(a)(1) Whenever any application for any type of alcoholic beverage control permit with the exception of a private club permit being sought in an area in which the sale of alcoholic beverages is not allowed shall be denied, no application for a permit shall be accepted from that same applicant or real party in interest for a period of one (1) year following the date on which such application is finally acted upon by the Director of the Alcoholic Beverage Control Division, by the Alcoholic Beverage Control Board on appeal, or by the appellate court system, unless the applicant or real party in interest can show a substantial change in the underlying facts which supported the decision to deny the application.

(2) Provided, this subchapter shall not apply if the application was denied solely because of disapproval of the location of the premises and if a new application is for a premises other than that described in the original application.

(3) "Same applicant" or "same real party in interest" as used in this subsection (a) shall be broadly interpreted by the director or the board to be the real party or parties in interest in the original application notwithstanding the fact that the subsequent application may be made in the name of a family member, business associate, or new business entity.

(b) Reapplication for a private club in an area where the retail sale of alcoholic beverages is not legal will continue to be controlled by § 3-9-228.

History. Acts 1997, No. 519, § 1; 1999, No. 1593, § 1.

3-4-223. Diversity in ownership and financial interest.

When issuing a permit under Title 3 of the Arkansas Code, the Alcoholic Beverage Control Division shall consider lack of diversity in ownership and financial interest in the geographic area at issue in the permit application.

History. Acts 2005, No. 2323, § 1.

SUBCHAPTER 3 — REVOCATION

SECTION.

3-4-301. Grounds for revocation.

3-4-302. Statement of causes of revocation.

SECTION.

3-4-303. Notice — Surrender of permit.

Cross References. Licenses and permits, removal of disqualification for criminal offenses, § 17-1-103.

Procedure for revocation and suspension of licenses, §§ 3-2-212 — 3-2-217.

Effective Dates. Acts 1935, No. 108, Art. 10: approved Mar. 16, 1935. Emergency clause provided: "Whereas, the repeal of the Eighteenth Amendment to the Constitution of the United States has created an emergency which requires immediate control of intoxicating liquors; and

"Whereas, the present state revenue does not meet the needs for the maintenance and development of the State Government and its agencies and the state's credit is threatened with impairment, an emergency is declared to exist and this act shall become a law and be effective on its passage and approval or nonaction by the Governor."

Acts 1969, No. 221, § 4: Mar. 10, 1969. Emergency clause provided: "It is hereby found and determined by the General Assembly that many retailers are in arrears in the payment of the Arkansas Gross Receipts Tax, the franchise tax, or the special 3% Alcoholic Beverages Excise Tax and that the State Revenue Department is unable to collect such taxes; that at present there is no method for effectively collecting such taxes from such retailers; and that in order to correct this situation, it is necessary that this act become effective immediately. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety shall become effective from and after its passage and approval."

CASE NOTES

Abatement of Nuisances.

State was not precluded from proceeding to abate defendant's liquor store as a public nuisance because other methods outlined under the Alcoholic Control Act

such as the revocation of the defendant's liquor license or the holding of a local option, might have been followed. *Click v. State*, 206 Ark. 648, 176 S.W.2d 920 (1944).

3-4-301. Grounds for revocation.

(a) Any permit issued pursuant to this act may be revoked for cause and must be revoked for the following causes:

(1) Conviction of the permittee or his or her agent or employee for selling any illegal beverages on the premises permitted;

(2) For making any false material statement in an application for a permit;

(3) If, within a period of two (2) years, there shall have been two (2) convictions for any violation of this act by a permittee, or two (2) convictions of any of his or her clerks, agents, employees, or servants of any violation of this act on the premises permitted;

(4) For transferring, assigning, or hypothecating a permit;

(5) Violating the provisions of § 3-1-103(c) which shall cause a forfeiture of the permit of all parties to the violation;

(6) For selling or agreeing to sell any spirituous, vinous, or malt liquors to a wholesaler, rectifier, or dispensary who is not permitted at the time of the agreement and sale to receive, store, transport, sell, and dispense same under the provisions of this act; or

(7) For failure or default of a permittee to pay any license or permit tax or any part thereof or penalties imposed by this act and for a violation of any rule or regulation of the Director of the Department of

Finance and Administration or the Director of the Alcoholic Beverage Control Division in pursuance thereof.

(b)(1) Whenever any person holding a retailer's permit to sell and dispense vinous or spirituous liquors for beverage purposes at retail shall fail to pay any Arkansas gross receipts tax, franchise tax, or the three percent (3%) special alcoholic beverage excise tax within sixty (60) days after the taxes become due, the Director of the Department of Finance and Administration shall notify the Alcoholic Beverage Control Board of that fact and the board shall immediately revoke such permit.

(2) It shall be unlawful for the board or any person to restore or issue a retailer's permit to any person whose permit has been revoked under the provisions of this subsection within two (2) years from the date of the revocation.

History. Acts 1935, No. 108, Art. 3, § 13; Pope's Dig., § 14117; Acts 1969, No. 221, § 1; A.S.A. 1947, §§ 48-316, 48-316.1.

Meaning of "this act". Acts 1935, No. 108, codified as §§ 3-1-101 — 3-1-103, 3-2-101, 3-2-205, 3-3-101 — 3-3-103, 3-3-212, 3-3-401, 3-3-404, 3-3-405, 3-4-101 — 3-4-103, 3-4-201, 3-4-202, 3-4-207 — 3-4-

211, 3-4-213, 3-4-214, 3-4-215 [repealed], 3-4-217, 3-4-219, 3-4-220, 3-4-301 — 3-4-303, 3-4-501, 3-4-503, 3-4-601 — 3-4-605, 3-8-301 — 3-8-311, 3-8-313 — 3-8-317, 23-12-708.

Cross References. Revocation for misstatement or concealment of fact in beer license application, § 3-5-303.

CASE NOTES

ANALYSIS

Constitutionality.

Appeals.

Sale of Premises.

Violation of Law.

Constitutionality.

State's authority to revoke a license to sell liquor does not violate any constitutional rights of a permittee because the license is a privilege and not a contract with the state to which property rights inure; the license is a privilege to do what would otherwise be a violation of criminal law and is not a matter of right but of legislative grace. *Blum v. Ford*, 194 Ark. 393, 107 S.W.2d 340 (1937).

Appeals.

The Commissioner of Revenues (now the Director of Alcoholic Beverage Control Division), after he has made an investigation which shows a violation of the law, may cancel a permit, but he cannot do so arbitrarily, and the dealer may appeal his action. *Blum v. Ford*, 194 Ark. 393, 107 S.W.2d 340 (1937).

Court to which a dealer appeals from order revoking his permit has duty to hear

the evidence, and if this is not sufficient to show a violation of the law, it should restrain the Commissioner of Revenues (now the Director of the Alcoholic Beverage Control Division) from cancelling the permit. *Blum v. Ford*, 194 Ark. 393, 107 S.W.2d 340 (1937).

Sale of Premises.

Although a permit may be revoked for a transfer or assignment thereof, a contract for the sale of a liquor store to nonresident purchasers was not illegal where purchasers knew at the time of the purchase that as nonresidents a liquor permit could not be transferred or issued to them. *Smith v. Ferguson*, 302 Ark. 388, 790 S.W.2d 162 (1990).

Violation of Law.

If the Commissioner of Revenues (now the Director of the Alcoholic Beverage Control Division) knows or discovers by investigation that law is being violated by person having a permit, he has not only the authority but the duty to revoke or cancel the permit. *Blum v. Ford*, 194 Ark. 393, 107 S.W.2d 340 (1937).

The Commissioner of Revenues (now the Director of the Alcoholic Beverage

Control Division) had power to cancel retail liquor license for violations of statutes where permittee sold liquor for consumption in the state upon which the export tax but not the retail tax had been paid,

without the necessity of a conviction through prosecution in the courts. *Whitmore v. McCarroll*, 198 Ark. 211, 128 S.W.2d 244 (1939).

3-4-302. Statement of causes of revocation.

(a) There shall be printed and furnished by the Director of the Alcoholic Beverage Control Division to each permittee a statement of the causes for which permits may be revoked under law.

(b) The statement shall be prepared by the director and delivered to the permittee with his or her permit or as soon as may be practicable thereafter.

(c) Any amendments therein shall also be sent by the director to all permittees as soon as may be practicable after the amendment.

(d) Failure to send the statement or changes therein, or failure to receive them, or any misstatement or error contained in the statement or amendments shall, however, not be an excuse or justification for any violation of law or prevent or remit or decrease any penalty or forfeiture therefor.

History. Acts 1935, No. 108, Art. 3, § 9;
1953, No. 49, § 1; A.S.A. 1947, § 48-313.

3-4-303. Notice — Surrender of permit.

(a)(1) Within three (3) days after a permit shall have been revoked, notice thereof shall be given to the permittee by mailing the notice addressed to him or her at the premises permitted.

(2) Notice shall also be mailed to the owner of the premises permitted.

(b) The holder of the permit shall thereupon surrender the permit to the Director of the Alcoholic Beverage Control Division.

(c) The mailing of the permit by the permittee to the director by registered mail or insured parcel post shall be deemed sufficient compliance with this provision.

(d)(1) The director, immediately upon notice of revocation, shall serve a written notice thereof upon the chief of police or chief police officer and the city clerk of the city or town in which the premises for which the revoked permit was issued is situated, or upon the sheriff of the county in case the permit was issued for premises situated outside a city or town.

(2) This notice shall include a statement of the number of the permit, the name and place of residence of the holder, the location of the permitted premises, and the date when the permit was revoked.

(e) In case the permit is not immediately surrendered, the director shall issue a written demand for the surrender of the permit and deliver the demand to the sheriff of the county in which the permitted premises are located or to any Alcoholic Beverage Control Enforcement Division

agent. The sheriff or division agent shall immediately take possession of the permit and return the permit to the director.

History. Acts 1935, No. 108, Art. 3, § 15; Pope's Dig., § 14119; A.S.A. 1947, § 48-318.

SUBCHAPTER 4 — VIOLATIONS

SECTION.

3-4-401. Authorization to impose fines.

3-4-402. Classes of violations and fines —
Multiple offenses.

3-4-403. Class A violations.

3-4-404. Class B violations.

SECTION.

3-4-405. Class C violations.

3-4-406. Failure to pay invoices.

3-4-407. Violation of local closing hours
laws.

Cross References. Prohibited practices, § 3-3-101 et seq.

3-4-401. Authorization to impose fines.

In addition to all other sanctions and penalties which may be administratively imposed by the Director of the Alcoholic Beverage Control Division pursuant to the procedures outlined in this title and the Arkansas Administrative Procedure Act, § 25-15-201 et seq., the director shall have the power and authority to levy fines and suspend them against controlled beverage permit holders when the director determines the permit holder has violated the alcoholic beverage control laws of this state or regulations of the Alcoholic Beverage Control Division.

History. Acts 1981, No. 790, § 2; A.S.A. 1947, § 48-346.

3-4-402. Classes of violations and fines — Multiple offenses.

(a) The following classes of alcoholic beverage control permit violations and fines are authorized to be levied and are established:

(1) Class A permit violations: Five hundred dollars (\$500) to one thousand dollars (\$1,000);

(2) Class B permit violations: Two hundred dollars (\$200) to five hundred dollars (\$500); and

(3) Class C permit violations: One hundred dollars (\$100) to two hundred dollars (\$200).

(b) The Director of the Alcoholic Beverage Control Division and the Alcoholic Beverage Control Board are hereby authorized to levy additional fines up to double the amount for the classes of violations found in subsection (a) of this section for a second offense of the same violation

within a twelve-month period, and up to three (3) times the fines authorized for the classes listed in subsection (a) of this section for a third offense of the same violation within a twelve-month period.

History. Acts 1981, No. 790, § 2; A.S.A. 1947, § 48-346; Acts 1989, No. 296, § 1; 1993, No. 172, § 1.

3-4-403. Class A violations.

The following acts on the part of any permittee are Class A permit violations:

(1) Failure to furnish access to premises by any law enforcement officer or any authorized Alcoholic Beverage Control Division personnel or failure to cooperate or take reasonable action to assist any such law enforcement officers or authorized division personnel who are on the permitted premises in the performance of their duties;

(2) Failure to allow inspection of books or records;

(3) Posting permit on unauthorized premises;

(4) Manufacture or possession of controlled beverage with excess alcoholic content;

(5) Sale by a manufacturer to other than a wholesaler. Provided, sales authorized by any law of the state relating to native wines shall not constitute a violation;

(6) Sale by a wholesaler to other than a retailer;

(7) Ownership or other interest in retail outlet by a manufacturer or a wholesaler. Provided, that such ownership or other interest authorized by any law of this state relating to native wines shall not be a violation;

(8) Unauthorized gift or service to retailers by a manufacturer or a wholesaler;

(9) Use of post-dated checks for payment of controlled beverages and merchandise;

(10) Wholesaler making delivery to a consumer;

(11) The permittee possessed or knew or reasonably should have known that any agent or employee or patron of the establishment possessed on the permitted premises any illegal drug or narcotic or controlled substance or that any agent or employee while acting on the permittee's behalf knowingly allowed the possession on the permitted premises of any illegal drug or narcotic or controlled substance; and

(12) Selling or allowing the consumption of alcoholic beverages on the permitted premises when the permit is suspended or on inactive status.

History. Acts 1981, No. 790, § 2; A.S.A. 1947, § 48-346; Acts 1991, No. 605, § 1; 1993, No. 172, § 2.

3-4-404. Class B violations.

The following acts on the part of the permittee are Class B violations:

- (1) Pledge, hypothecation, or use of a permit as collateral;
- (2) Defacing, destroying, or altering a permit;
- (3) Transporting controlled beverages in violation of regulations or law;
- (4) Manufacturing, selling, offering, dispensing, or giving away, possessing, or transporting controlled beverages upon which tax is not paid;
- (5) Failure to maintain proper records by a manufacturer;
- (6) Failure by a wholesaler to maintain proper records;
- (7) Failure by a wholesaler to register new brands;
- (8) Giving samples without authorization;
- (9) Sales for anything other than cash or check;
- (10) Delivery without an invoice by a wholesaler;
- (11) Selling to minors;
- (12) Selling to the insane;
- (13) Selling to bootleggers;
- (14) Accepting food stamps in payment for controlled beverages;
- (15) Unauthorized employment of minors;
- (16) Any disorderly conduct or a breach of the peace by patrons or employees on the permitted premises. Such disorderly conduct shall include, but not be limited to, fights, brawls, or disturbances which result in bodily injury to any degree to any person on the premises;
- (17) Violation of § 3-3-218, failure to be a good neighbor;
- (18) Selling to an intoxicated person;
- (19) Unauthorized manufacturing, selling, offering, dispensing, or giving away of controlled beverages;
- (20) Unlawful manufacture or sale in a dry area;
- (21) Conducting or permitting gambling on premises;
- (22) Violation of legal closing hours;
- (23) Sale of controlled beverages by vending machine; and
- (24) Possession of a weapon on the permitted premises by any person without a possessory or proprietary interest in the permitted premises.

History. Acts 1981, No. 790, § 2; A.S.A. 1947, § 48-346; Acts 1991, No. 605, § 2; 1993, No. 172, § 3.

3-4-405. Class C violations.

(a) The following acts on the part of any permittee are Class C permit violations:

- (1) Sale of controlled beverages when the permit is not posted;
- (2) Failure to maintain health, safety, and sanitary standards;
- (3) Removing or obliterating a container label or mark;
- (4) Consuming a controlled beverage while on duty;
- (5) Failure to surrender a permit when the business has been voluntarily inoperative for over thirty (30) days;

(6) Storing controlled beverages in unauthorized warehouses, with each day constituting a separate offense after notice;

(7) Failure to make proper application and obtain approval for acting as a sales agent for a manufacturer, wholesaler, or rectifier unless duly authorized by the Director of the Alcoholic Beverage Control Division;

(8) Use of an unlabeled dispensing faucet;

(9) Failure of a retailer to keep and maintain records;

(10) Unauthorized sale of broken packages and merchandise;

(11) Negligently allowing prostitutes to frequent the premises;

(12) Allowing immoral conduct on the premises;

(13) Disposing of or receiving samples by a retailer;

(14) Negligently selling to users of narcotics;

(15) Delivery of controlled beverages by a retailer away from his or her permitted premises;

(16) Sale of controlled beverages in a container or of a size other than that approved;

(17) Misrepresentation of a brand, or keeping beverages in an unauthorized container, or refilling, diluting, or failing to destroy empty bottles;

(18) Failure to maintain membership books or properly maintain guestbooks by a private club;

(19) Allowing an unauthorized guest in a private club;

(20) Dispensing to nonmembers or nonguests by a private club;

(21) Unauthorized purchasing by a private club from other than a retailer;

(22) Failure of a private club to maintain financial records;

(23) Failure by a private club to furnish the name and address of the authorized public accountant and bookkeeper;

(24) Unauthorized advertising by a private club;

(25) Unauthorized transportation of alcoholic beverages through a dry area without a permit; and

(26) Failure to keep and maintain records or make a report.

(b) Any other act that is determined at an appropriate hearing by the director to be a violation will be considered a Class C permit violation and may be fined accordingly.

History. Acts 1981, No. 790, § 2; A.S.A. 1947, § 48-346; Acts 1991, No. 605, § 3.

3-4-406. Failure to pay invoices.

(a) The Alcoholic Beverage Control Division is authorized to maintain a list of permit holders who have failed to pay invoices forwarded by persons holding wholesale liquor permits as issued by the division.

(b) Failure to pay an invoice shall not constitute an administrative violation per se, and the list shall be maintained for such purposes as the division shall determine.

History. Acts 1981, No. 790, § 7; A.S.A. 1947, § 48-347.

3-4-407. Violation of local closing hours laws.

(a) The General Assembly, by legislation, and the Alcoholic Beverage Control Division, by regulations, have created general closing hours for establishments which sell or dispense alcoholic beverages. However, the General Assembly and the division have also given the power to local city governments or local county quorum courts to adopt hours of operation which are more restrictive than the general hours of operation stated for certain permits issued by the division. It is recognized that it is more convenient for local authorities to change local ordinances on a basis that can be more frequent than the basis with which the General Assembly meets or the division adopts regulations. For that reason, local control of these issues, as allowed by Code sections and regulations, is desirable. It is also recognized that when a city or county adopts a more restrictive law in this area it is unnecessary and burdensome for the city or county to notify the division each time that a modification is made to local laws, and for this reason enforcement of more restrictive ordinances should be by local law enforcement personnel who are attached to the jurisdiction which creates the more restrictive hours-of-operations law.

(b) It is hereby provided that when any permittee of the division is cited with a violation of any local closing hour ordinance adopted by a city government or a county government, that violation of an ordinance which is more restrictive than provided for by the state shall be punishable by a fine of one hundred dollars (\$100) to five hundred dollars (\$500) and that violation shall not be considered to be an administrative violation against the permit issued by the division.

(c) Enforcement of the more restrictive local ordinances and the issuance of citations for violations thereof shall be by local law enforcement officers within the jurisdiction where such ordinance is in effect. Such citations shall be heard only in a local court of competent jurisdiction.

History. Acts 1999, No. 305, § 1.

SUBCHAPTER 5 — DISPOSITION OF FEES AND TAXES

SECTION.

3-4-501. When fees due — Disposition.

3-4-502. Fines.

SECTION.

3-4-503. Suits to restrain collection — Refunds.

Effective Dates. Acts 1935, No. 108, Art. 10: approved Mar. 16, 1935. Emergency clause provided: "Whereas, the repeal of the Eighteenth Amendment to the Constitution of the United States has cre-

ated an emergency which requires immediate control of intoxicating liquors; and

"Whereas, the present state revenue does not meet the needs for the maintenance and development of the State Gov-

ernment and its agencies and the state's credit is threatened with impairment, an emergency is declared to exist and this act

shall become a law and be effective on its passage and approval or nonaction by the Governor."

3-4-501. When fees due — Disposition.

(a) All license taxes provided and levies under this act shall be due and payable on the tenth day of each month succeeding the time when the act is done requiring the license.

(b) It shall be the duty of the person required to pay the license to make a report giving the facts in such form and substance as the Director of the Alcoholic Beverage Control Division shall by rule require. All payments therefor shall be made to the Director of the Department of Finance and Administration, payable to the Treasurer of State, and all permit fees shall likewise be made to the Director of the Department of Finance and Administration and payable to the Treasurer of State.

(c) All permits or license fees or taxes, penalties, fines, and costs received by the Director of the Department of Finance and Administration under the provisions of this act shall be general revenues and shall be deposited in the State Treasury to the credit of the State Apportionment Fund. The Treasurer of State shall allocate and transfer the amounts to the various State Treasury funds participating in general revenues in the respective proportions to each as provided by and to be used for the respective purposes set forth in the Revenue Stabilization Law, § 19-5-101 et seq.

History. Acts 1935, No. 108, Art. 4, § 5; Pope's Dig., § 14131; Acts 1953, No. 118, § 32(E); A.S.A. 1947, § 48-325.

Meaning of "this act". Acts 1935, No. 108, codified as §§ 3-1-101 — 3-1-103, 3-2-101, 3-2-205, 3-3-101 — 3-3-103, 3-3-212, 3-3-401, 3-3-404, 3-3-405, 3-4-101 —

3-4-103, 3-4-201, 3-4-202, 3-4-207 — 3-4-211, 3-4-213, 3-4-214, 3-4-215 [repealed], 3-4-217, 3-4-219, 3-4-220, 3-4-301 — 3-4-303, 3-4-501, 3-4-503, 3-4-601 — 3-4-605, 3-8-301 — 3-8-311, 3-8-313 — 3-8-317, 23-12-708.

3-4-502. Fines.

When any fine is levied and collected under subchapter 4 of this chapter, the revenue shall be deposited in the General Revenue Fund Account.

History. Acts 1981, No. 790, § 2; A.S.A. 1947, § 48-346.

3-4-503. Suits to restrain collection — Refunds.

(a) No suit shall be maintained in any court to restrain or delay the collection or payment of any fee or tax levied by this act.

(b) The aggrieved taxpayer or permittee shall pay the tax or fee as and when required and may at any time within two (2) years from the

date of payment sue the state through its agent, the Auditor of State, in an action at law in any state or federal court otherwise having jurisdiction of the parties and subject matter for the recovery of the tax or fee paid with legal interest thereon from the date of payment.

(c)(1) If it is finally determined that the tax or fee or any part thereof was wrongfully collected, for any reason, it shall be the duty of the Auditor of State to issue his or her warrant on the Treasurer of State for the amount of the tax or fee so adjudged to have been wrongfully collected, together with legal interest thereon.

(2) The Treasurer of State shall pay the Auditor of State's warrant at once out of the General Revenue Fund Account of the state in preference to other warrants or claims against the state.

(d) A separate suit need not be filed for each individual payment made by any taxpayer, but a recovery may be had in one (1) suit for as many payments as may have been made.

History. Acts 1935, No. 108, Art. 5, § 2; Pope's Dig., § 14133; A.S.A. 1947, § 48-326.

Publisher's Notes. This section may

be affected by the Arkansas Tax Procedure Act, § 26-18-101 et seq.

Meaning of "this act". See note to § 3-4-501.

SUBCHAPTER 6 — PARTICULAR PERMITS

SECTION.

3-4-601. Kinds of permits generally.

3-4-602. Distillers or manufacturers.

3-4-603. Rectifiers.

3-4-604. Retailers.

SECTION.

3-4-605. Wholesalers.

3-4-606. Wholesalers — Additional requirements.

Cross References. Vinous, spirituous, and malt liquors defined, § 3-1-102.

Effective Dates. Acts 1935, No. 108, Art. 10: approved Mar. 16, 1935. Emergency clause provided: "Whereas, the repeal of the Eighteenth Amendment to the Constitution of the United States has created an emergency which requires immediate control of intoxicating liquors; and

"Whereas, the present state revenue does not meet the needs for the maintenance and development of the State Government and its agencies and the state's credit is threatened with impairment, an emergency is declared to exist and this act shall become a law and be effective on its passage and approval or nonaction by the Governor."

Acts 1973, No. 299, § 2: Mar. 12, 1973. Emergency clause provided: "It is found and declared by the General Assembly that this bill is essential to the proper preservation of revenues; an emergency is

therefore declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1983, No. 420, § 3: Mar. 13, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that permits issued by the Alcoholic Beverage Control Division should be renewable annually no later than August 31; and that this act is immediately necessary to so provide. Therefore, an emergency is hereby declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1983, No. 675, § 8: Mar. 22, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that the Alcoholic Beverage Control Division should be authorized to re-

tain ½ of the application permit fees in instances where the permits are denied in order to partially defray the cost of reviewing the permit application and this act is necessary to authorize the same. Therefore an emergency is hereby de-

clared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

3-4-601. Kinds of permits generally.

There shall be six (6) kinds of permits, each of which shall be distinctive in color and design so as to be readily distinguishable from each other, to wit:

- (1) Distiller's permit;
- (2) Brewer's permit;
- (3) Rectifier's permit;
- (4) Wholesaler's permit;
- (5) Dispenser's permit; and
- (6) Hotel, restaurant, or club permit.

History. Acts 1935, No. 108, Art. 3, § 2; Pope's Dig., § 14105; A.S.A. 1947, § 48-302.

Cross References. Permit to transport, § 3-7-106.

CASE NOTES

Other Permits Excluded.

Legislative designation of the types of permits which could be issued excluded by

implication other types of permits. *Hinton v. State ex rel. Purcell*, 246 Ark. 341, 438 S.W.2d 57 (1969).

3-4-602. Distillers or manufacturers.

(a) Any person may apply to the Director of the Alcoholic Beverage Control Division for a permit to manufacture, distill, import, transport, store, and sell to a wholesaler, jobber, or distributor spirituous, vinous (except wines), or malt liquors to be used and sold for beverage purposes.

(b) The application shall be in writing and verified and shall set forth in detail such information concerning the applicant for the permit and the premises to be used therefor as the director shall require.

(c) The application shall be accompanied by a certified check, cash, or postal money order for the amount required by this act for the permit.

(d) If the director shall grant the application, he or she shall issue a permit in such form as shall be determined by rules and regulations established by the director.

(e) The permit shall contain a description of the premises to be used by the applicant and in form and in substance shall be a permit to the person therein specifically designated to manufacture, distill, transport, and sell to a wholesaler, jobber, or distributor spirituous, vinous, or malt liquors in or from the premises therein specifically authorized.

(f) No distiller or manufacturer shall sell or contract to sell any spirituous, vinous (except wines), or malt liquors referred to herein to any wholesaler, distributor, or jobber, or to any other person who is not duly authorized under this act to receive, possess, transport, distribute, or sell those liquors.

(g) Under such rules as may be adopted by the director, a distiller or manufacturer may sell, deliver, or transport only:

- (1) To wholesalers;
- (2) To rectifiers; and
- (3) For the purpose of export out of the state.

(h)(1) For the privilege of distilling spirituous liquors or manufacturing malt liquors, there is assessed and there shall be paid an annual permit fee of and by every person engaged therein. The permit fee shall be in the sum of one thousand dollars (\$1,000) for each and every manufacturing or distilling plant.

(2) For the privilege of manufacturing vinous liquors (except wines), there is assessed and there shall be paid an annual permit fee of and by every person engaged therein. The permit fee shall be in the sum of five hundred dollars (\$500) for each and every manufacturing plant.

(3) However, for the privilege of distilling brandy or spirituous liquors for use only in the fortifying of native wines, which are wines manufactured from the juices of grapes, berries, and other fruits or vegetables grown in this state, there shall be collected an annual permit fee of two hundred fifty dollars (\$250) for each manufacturing or distilling plant.

History. Acts 1935, No. 108, Art. 3, § 3; 1935, No. 108, Art. 4, § 1; Pope's Dig., §§ 14107, 14127; Acts 1939, No. 302, § 1; 1983, No. 675, § 1; A.S.A. 1947, §§ 48-303, 48-321.

Publisher's Notes. Pursuant to § 3-1-103, only wines or vinous liquors manufactured in the State of Arkansas are exempted from the provisions of Acts 1935, No. 108.

Meaning of "this act". Acts 1935, No. 108, codified as §§ 3-1-101 — 3-1-103, 3-2-101, 3-2-205, 3-3-101 — 3-3-103, 3-3-212, 3-3-401, 3-3-404, 3-3-405, 3-4-101 — 3-4-103, 3-4-201, 3-4-202, 3-4-207 — 3-4-211, 3-4-213, 3-4-214, 3-4-215 [repealed], 3-4-217, 3-4-219, 3-4-220, 3-4-301 — 3-4-303, 3-4-501, 3-4-503, 3-4-601 — 3-4-605, 3-8-301 — 3-8-311, 3-8-313 — 3-8-317, 23-12-708.

CASE NOTES

Export.

Export provisions of this act were not repealed by Acts 1939, No. 176 (repealed) which repealed some statutory provisions pertaining to sale of liquors for consump-

tion outside of state. *Southwestern Distilled Prods., Inc. v. State ex rel. Butt*, 203 Ark. 524, 160 S.W.2d 208 (1941).

Cited: *Hinton v. State ex rel. Purcell*, 246 Ark. 341, 438 S.W.2d 57 (1969).

3-4-603. Rectifiers.

(a) Any person may apply to the Director of the Alcoholic Beverage Control Division for a permit for the rectifying, purifying, mixing, blending, or flavoring of spirituous liquors or the bottling, warehousing, or other handling or distribution of rectified distilled spirits.

(b) The application shall be in writing and verified and shall set forth in detail such information concerning the applicant for the permit and the premises to be used therefor as the director shall require.

(c) The application shall be accompanied by a certified check, cash, or postal money order for the amount required by this act for the permit.

(d) If the director shall grant the application, he or she shall issue a permit in such form as shall be determined by rules.

(e) The permit shall contain a description of the premises to be used by the applicant and in form and in substance shall be a permit to the person therein specifically designated to purify, mix, blend, or flavor spirituous or vinous liquors or to bottle, warehouse, or otherwise handle or distribute rectified distilled spirits in the premises therein specifically authorized.

(f) The director shall have absolute discretion as to the location of the premises to be used.

(g) Under such rules as may be adopted by the director, any rectifier may sell, deliver, or transport only:

(1) To wholesalers;

(2) To other rectifiers; and

(3) For the purpose of export out of the state.

(h) For the privilege of rectifying, blending, or flavoring spirituous liquors, there is assessed and there shall be paid an annual permit fee of and by every person engaged therein the sum of fifteen hundred dollars (\$1,500) for each and every rectifying, blending, or flavoring plant.

History. Acts 1935, No. 108, Art. 3, § 4; 1935, No. 108, Art. 4, § 2; Pope's Dig., §§ 14108, 14128; Acts 1983, No. 675, § 2; A.S.A. 1947, §§ 48-304, 48-322.

Meaning of "this act". See note to § 3-4-602.

Cross References. Dispensary defined, § 3-1-102.

CASE NOTES

ANALYSIS

Construction.

Export.

Form of Permit.

Construction.

In subsection (a) of this section, the word "or" preceding "the bottling ..." is not used in the sense of "and" and additional tax on liquors sold by rectifier but not rectified by him was not authorized. *McCarroll v. Southwest Distilled Prods., Inc.*, 198 Ark. 729, 131 S.W.2d 5 (1939).

Export.

Export provisions of this act were not repealed by Acts 1939, No. 176 (repealed)

which repealed some statutory provisions pertaining to sale of liquors for consumption outside of state. *Southwestern Distilled Prods., Inc. v. State ex rel. Butt*, 203 Ark. 524, 160 S.W.2d 208 (1941).

Form of Permit.

This section leaves no discretion to the Commissioner of Revenues (now Director of the Alcoholic Beverage Control Division) as to the form and substance of a rectifier permit. *McCarroll v. Southwest Distilled Prods., Inc.*, 198 Ark. 729, 131 S.W.2d 5 (1939).

Cited: *Hinton v. State ex rel. Purcell*, 246 Ark. 341, 438 S.W.2d 57 (1969).

3-4-604. Retailers.

(a) Any person, other than a distiller, importer, rectifier, or wholesaler, may apply to the Director of the Alcoholic Beverage Control Division for a permit to sell and dispense vinous or spirituous liquors for beverage purposes at retail.

(b) The application shall be in writing and shall set forth in detail such information concerning the applicant for the permit and the premises to be used by the applicant as the director may require.

(c) The application shall be accompanied by a certified check, cash, or postal money order for the amount required by this act for the permit.

(d) If the director shall grant the application, he or she shall issue a permit in such form as shall be determined by the rules of the Alcoholic Beverage Control Division.

(e) The permit shall contain a description of the premises permitted and in form and substance shall be a permit to the person specifically designated in the permit to sell and dispense at retail spirituous or vinous liquors.

(f) All such sales shall be in unbroken packages which shall not be opened or the contents or any part consumed on the premises where purchased.

(g) For the privilege of operating a dispensary from which the vinous, spirituous, and malt liquors (except wines), are to be dispensed in the manner provided in this act, there is assessed and there shall be paid a permit fee of and by the person engaged therein in the sum of four hundred dollars (\$400) per annum payable on or before June 30 of each calendar year for the fiscal year beginning July 1.

History. Acts 1935, No. 108, Art. 3, § 6; 1935, No. 108, Art. 4, § 4; Pope's Dig., §§ 14110, 14130; Acts 1983, No. 420, § 1; 1983, No. 675, § 4; A.S.A. 1947, §§ 48-309, 48-313.1, 48-324.

Publisher's Notes. For exclusion of wines, see Publisher's Notes to § 3-4-602.

Meaning of "this act". See note to § 3-4-602.

Cross References. Additional fee for operation of dispensary, § 3-7-111.

Additional permit fee generally, § 3-7-111.

Retail liquor dealer permitted to sell native wines without additional license, § 3-5-102.

CASE NOTES**ANALYSIS**

Construction.
Private Clubs.

Construction.

The language of § 3-4-206 is obviously applicable to the retail liquor business and complements this section. When the two statutes are read together, it is obvious that the legislature intended to prevent retail "package" stores from operat-

ing within 200 yards of a school or church building. *Rowell v. Austin*, 276 Ark. 445, 637 S.W.2d 531 (1982).

Private Clubs.

The prohibition of § 3-4-206 on the issuance of a new permit to engage in the retail liquor business at a location situated within 200 yards of a church would not apply to the transfer of a private club permit for dispensation of alcoholic beverages by the drink or in broken or unsealed

containers for consumption on the premises. *Jones v. Reed*, 267 Ark. 237, 590 S.W.2d 6 (1979).

Cited: *Carr v. Turner*, 238 Ark. 889, 385 S.W.2d 656 (1965).

3-4-605. Wholesalers.

(a) Any person other than a distiller, manufacturer, rectifier, or importer may apply to the Director of the Alcoholic Beverage Control Division for a permit to sell spirituous, vinous (except wines), or malt liquors at wholesale.

(b) The application shall be in writing and shall set forth in detail such information concerning the applicant for the permit and the premises to be used by the applicant as the director may require.

(c) The application shall be accompanied by a certified check, cash, or postal money order for the amount required by this act for the permit.

(d) If the director shall grant the application, he or she shall issue a permit in such form as shall be determined by the rules of the Alcoholic Beverage Control Division.

(e) The permit shall contain a description of the premises permitted and in form and substance shall be a permit to the person therein specifically designated to sell spirituous, vinous, or malt liquors for beverage purposes.

(f) A person holding a distiller's or rectifier's permit need not obtain a wholesaler's permit in order to sell at wholesale spirituous or vinous liquors.

(g) No person other than a person holding a distiller's, manufacturer's, rectifier's, or wholesaler's permit shall sell spirituous, vinous (except wines), or malt liquors at wholesale. No wholesaler holding a permit shall sell or buy from another unless he or she holds a permit, but a wholesaler may export from or import into this state such liquors under rules and regulations promulgated by the Alcoholic Beverage Control Division.

(h) No wholesaler shall sell or contract to sell any spirituous, vinous, or malt liquors to any dispensary, hotel, restaurant, or club if the dispensary, hotel, restaurant, or club is not duly authorized under this act to receive, possess, transport, distribute, or sell spirituous, vinous, or malt liquors.

(i) Further, a licensed wholesaler of any spirituous or vinous liquors in Arkansas can only purchase spirituous or vinous liquors from a distiller, importer, rectifier, or a domestic wine producer, provided that this restriction shall not apply to the purchase of native wines.

(j)(1) For the privilege of storing, transporting, and selling spirituous, vinous, or malt liquors at wholesale, there is assessed and there shall be paid an annual permit fee of and by every person engaged therein. The permit fee shall be in the sum of seven hundred dollars (\$700) for each separate and distinct establishment.

(2) However, this section shall not apply to residents of Arkansas who store, transport, and sell wine at wholesale manufactured by them in this state.

History. Acts 1935, No. 108, Art. 3, § 5; 1935, No. 108, Art. 4, § 3; Pope's Dig., §§ 14109, 14129; Acts 1973, No. 299, § 1; 1983, No. 675, § 3; A.S.A. 1947, §§ 48-305, 48-323.

Publisher's Notes. For exclusion of wines, see Publisher's Notes to § 3-4-602.

Meaning of "this act". See note to § 3-4-602.

Cross References. Additional permit tax, § 3-7-111.

Brandy, manufacture and sale, § 3-6-102.

Wholesalers, sales of malt liquor of greater than 5% alcohol, § 3-5-101.

CASE NOTES

Cited: Hinton v. State ex rel. Purcell, 246 Ark. 341, 438 S.W.2d 57 (1969).

3-4-606. Wholesalers — Additional requirements.

(a) In addition to any restriction or requirement now imposed by law or by valid regulation promulgated in accordance with law, the following persons shall not be eligible hereafter to receive, obtain, or be granted any wholesale liquor permit:

(1) Any individual person who is not a citizen and bona fide resident of the State of Arkansas and who has not been domiciled in the State of Arkansas continuously for at least five (5) years next preceding the date of his or her application for permit;

(2) Any corporation in which any officer, director, manager, or stockholder of which would be ineligible as an individual person to obtain a permit by reason of the foregoing provisions of subdivision (a)(1) of this section or by reason of any other existing restriction or provision of law or valid regulation promulgated in accordance with law;

(3) Any partnership, any of whose members or manager would be ineligible as an individual to obtain such permit by reason of the provisions of subdivision (a)(1) of this section or of any other provisions of law or valid regulation as aforesaid.

(b)(1) Any corporation which shall apply for a wholesale liquor permit shall, at the time of filing, attach thereto a list of its stockholders, managers, directors, and officers on such form as may be prescribed by the officer or authority issuing the permit, verified by the president and secretary and showing the names, addresses, and places of residence of all such persons for the five (5) years next preceding the date of application.

(2) When the residence or address of any such stockholder, manager, director, or officer is changed, the change shall be reported by the corporation to such officer or authority within ten (10) days thereafter.

(3) No stock in any corporation holding a permit shall be issued or transferred to any ineligible individual, except in the case of transfer by reason of death of a stockholder. In that event, the transfer by death to any ineligible individual shall be reported by the corporation to the issuing officer or authority not later than sixty (60) days after the death. If within six (6) months thereafter the stock transferred by death shall not have been transferred by bona fide transaction to an individual

otherwise eligible to receive the permit as provided herein, and as provided by existing law or regulations, as aforesaid, the permit of the corporation shall immediately be revoked and cancelled.

(c) The provisions of this section shall not apply to any stock owned in any company legally operating in the State of Arkansas on June 7, 1951.

(d)(1) Any wholesale liquor permit that may be issued to any individual, partnership, or corporation which shall be found thereafter ineligible as provided in this section, or as otherwise provided by law or regulations, shall be cancelled and revoked.

(2) If any individual, partnership, or corporation shall not comply fully with the provisions hereof, any permit theretofore issued shall be cancelled and revoked.

(e) This section shall not apply to any person, firm, or corporation which, for a period of at least ten (10) years prior to June 7, 1951, had continuously been the holder of a wholesale liquor permit issued by this state.

(f) This section shall be cumulative to existing restrictions and requirements governing the issuance of wholesale liquor permits.

History. Acts 1951, No. 379, §§ 1-3;
A.S.A. 1947, §§ 48-314.1 — 48-314.3.

CASE NOTES

Preexisting Corporations.

If corporation was legally doing business in state under wholesale permit on effective date of this section, its permit could not be revoked on the ground that its stockholders were nonresident, since

residence requirements in such case were restricted to officers, managers, and directors of the corporation. Callahan v. Little Rock Distrib. Co., 220 Ark. 443, 248 S.W.2d 97 (1952).

SUBCHAPTER 7 — POST EXCHANGE PACKAGE PERMIT

SECTION.

3-4-701. Creation — Issuance — Expiration.

3-4-702. Hours of lawful sales — Purchase from wholesale distributors.

SECTION.

3-4-703. Authorized purchasers.

3-4-704. Rules and regulations.

3-4-705. Unauthorized sales — Penalties.

3-4-706. Military service club mixed drink permit.

A.C.R.C. Notes. References to "this chapter" in subchapters 1-6 may not apply to this subchapter which was enacted subsequently.

References to "this subchapter" in §§ 3-4-701 to 3-4-705 may not apply to § 3-4-706 which was enacted subsequently.

3-4-701. Creation — Issuance — Expiration.

(a)(1) In addition to all other existing alcoholic beverage permits authorized to be issued by the Alcoholic Beverage Control Division for the retail sale of alcoholic beverages, there is hereby created a “post exchange package permit”, which shall authorize the sales of spirituous, vinous, and malt beverages, light wine, light beer, premixed spirituous liquor, light spirituous liquor, and Arkansas native wine, as such beverages are defined by this title, at post exchange facilities located at Camp Joseph T. Robinson and Fort Chaffee upon property owned or controlled by the State of Arkansas and operated by and under the exclusive control of the militia.

(2) The permit created herein shall not be subject to any quota restrictions.

(b) The permits authorized in this section shall be issued by the Alcoholic Beverage Control Division to qualified persons whose application for the permit shall be accompanied by a letter of authorization signed by the Adjutant General for the State of Arkansas.

(c) Each permit shall be issued annually for a fee of one hundred dollars (\$100) and shall expire on June 30 of each and every year.

History. Acts 1989, No. 617, §§ 1-3;
1997, No. 366, § 1.

3-4-702. Hours of lawful sales — Purchase from wholesale distributors.

(a) The hours of lawful sales under the post exchange package permit shall be the same as those established for military service clubs pursuant to § 3-4-706.

(b) All alcoholic beverages authorized to be sold under this title shall be purchased from wholesale distributors licensed by the Alcoholic Beverage Control Division.

History. Acts 1989, No. 617, § 4; 2005,
No. 1020, § 1.

Amendments. The 2005 amendment substituted “military service clubs pursu-

ant to § 3-4-706” for “other classes of off-premises retail permits pursuant to this title” in (a).

3-4-703. Authorized purchasers.

Sales of alcoholic beverages under the post exchange permit shall be limited to those persons over the age of twenty-one (21) years who are:

(1) Active or retired members of the Army National Guard and Air National Guard;

(2) Active, retired, and reserve members of the armed forces of the United States;

(3) Department of Defense employees;

(4) Full-time employees of the militia;

(5) Students attending training programs at Camp Joseph T. Robinson or Fort Chaffee;

(6) Contractors and their employees performing work pursuant to a contract with the United States or the State of Arkansas on Camp Joseph T. Robinson or Fort Chaffee;

(7) Employees of tenant government agencies located on Camp Joseph T. Robinson or Fort Chaffee; and

(8) Dependents of the above-named persons who hold identification cards evidencing their status as may be found acceptable to the Adjutant General.

History. Acts 1989, No. 617, § 5; 1995, No. 521, § 2; 1997, No. 1201, § 13.

A.C.R.C. Notes. Acts 1997, No. 1201, § 1, codified as § 12-63-102, provided: "Legislative Findings of Fact. (a) The United States Congress has directed the United States Army to close certain military training posts. Fort Chaffee will be operated by the Adjutant General as a reserve component military training facility. Other agencies, departments and political subdivisions of the United States or the State of Arkansas will or have indicated an interest to acquire or occupy portions of Fort Chaffee that are not needed for military purposes. The Adjutant General of Arkansas is best suited to act as the executive agent of the State of Arkansas to negotiate with the Secretary of the Army and the various tenant agencies for the orderly administration of Fort Chaffee."

tant General of Arkansas is best suited to act as the executive agent of the State of Arkansas to negotiate with the Secretary of the Army and the various tenant agencies for the orderly administration of Fort Chaffee.

"(b) It is necessary for the State of Arkansas to amend certain laws concerning military reservations and to authorize particular activities on Fort Chaffee in order to facilitate administration and operation of Fort Chaffee as a military reservation."

Cross References. Canteen — Inventory and sales — Tax exemptions, § 12-63-406.

3-4-704. Rules and regulations.

The Alcoholic Beverage Control Division is authorized to adopt reasonable rules and regulations to carry out the intent and provisions of this subchapter, to establish appropriate application forms, permit forms, and procedures, and to do any and all other things necessary to implement the provisions of this subchapter.

History. Acts 1989, No. 617, § 6.

3-4-705. Unauthorized sales — Penalties.

Any unauthorized sales pursuant to the permit created herein shall be subject to the same penalties as established for other off-premises retail permits pursuant to this title.

History. Acts 1989, No. 617, § 7.

3-4-706. Military service club mixed drink permit.

(a) In addition to the post exchange and other post operations authorized to be taken over by the militia pursuant to the provisions of this section, the Adjutant General is given further authority to take over operation of all military service clubs on Fort Chaffee.

(b)(1) It is recognized that Fort Chaffee has operated under exclusive federal jurisdiction and that such military service clubs have not been

required to obtain a license from the State of Arkansas to authorize such operations.

(2) However, pursuant to resumption of state jurisdiction over Fort Chaffee, state licenses will be required.

(c)(1) Therefore, there is hereby created a military service club mixed drink permit authorizing the sale of alcoholic beverages as defined in § 3-9-202 et seq. to be issued to service clubs on military reservations owned or controlled by the State of Arkansas.

(2) The Alcoholic Beverage Control Division is authorized to issue such a permit to each military service club operating on Fort Chaffee.

(3)(A) The annual fee for each such permit shall be five hundred dollars (\$500), and such fees shall be due and collected in the same manner as all other permit fees collected by the division.

(B) Food service requirements for restaurants, as set out in § 3-9-202 et seq. shall not be applicable.

(C) Hours of operation for such service clubs shall be the same as are now in existence for private clubs licensed pursuant to § 3-9-221 et seq.

(4) The division is authorized to adopt reasonable rules and regulations to provide for the operation of such service clubs consistent with the intent and purposes of this section.

History. Acts 1997, No. 1201, § 15.

A.C.R.C. Notes. Acts 1997, No. 1201, § 1, codified as § 12-63-102, provided: "Legislative Findings of Fact. (a) The United States Congress has directed the United States Army to close certain military training posts. Fort Chaffee will be operated by the Adjutant General as a reserve component military training facility. Other agencies, departments and political subdivisions of the United States or the State of Arkansas will or have indicated an interest to acquire or occupy portions of Fort Chaffee that are not needed for military purposes. The Adjutant General of Arkansas is best suited to act as the executive agent of the State of Arkansas to negotiate with the Secretary of the Army and the various tenant agen-

cies for the orderly administration of Fort Chaffee.

"(b) It is necessary for the State of Arkansas to amend certain laws concerning military reservations and to authorize particular activities on Fort Chaffee in order to facilitate administration and operation of Fort Chaffee as a military reservation."

References to "this subchapter" in §§ 3-4-701 to 3-4-705 may not apply to this section which was enacted subsequently.

References to "this chapter" in subchapters 1-6, 8, and §§ 3-4-701 to 3-4-705 may not apply to this section which was enacted subsequently.

Cross References. Military service club, § 12-63-501 et seq.

SUBCHAPTER 8 — RESPONSIBLE PERMITTEE PROGRAMS

SECTION.

3-4-801. Legislative intent and purpose.

3-4-802. Definitions.

3-4-803. Responsible permittee program.

3-4-804. Effect of compliance.

SECTION.

3-4-805. Certification.

3-4-806. Mitigation of fines or penalties.

3-4-807. Fees.

A.C.R.C. Notes. References to “this chapter” in subchapters 1-6 may not apply to this subchapter which was enacted subsequently.

3-4-801. Legislative intent and purpose.

The legislative intent and purpose of this subchapter is to:

- (1) Eliminate the sale of alcoholic beverages to and consumption of alcoholic beverages by underage persons;
- (2) Reduce intoxication and to reduce accidents, injuries, and deaths in the state which are related to intoxication; and
- (3) Encourage alcoholic beverage permit holders to be prudent in the sale and service of alcoholic beverages.

History. Acts 1993, No. 173, § 1.

3-4-802. Definitions.

The following words or phrases or the plural of those words or phrases shall have the meaning ascribed to them in this section unless the context clearly requires otherwise:

- (1) “Board” means the Alcoholic Beverage Control Board of the State of Arkansas; and
- (2) “Permittee” means a person who is licensed by the board to sell or dispense alcoholic beverages for on-premises consumption or for off-premises consumption, or both.

History. Acts 1993, No. 173, § 2.

3-4-803. Responsible permittee program.

(a)(1) The Alcoholic Beverage Control Board shall oversee a server training program designed to encourage permittees and their employees to treat the sale and service of alcoholic beverages in a responsible manner.

(2) To that end, the board shall adopt rules and regulations which shall implement the intent of this subchapter.

(b) The program shall be entitled the responsible permittee program.

History. Acts 1993, No. 173, § 3.

CASE NOTES

Minors.

This section and §§ 3-3-202 and 3-3-218 create a duty for licensees to exercise a high standard of care for the protection of

minors, and a breach of this duty can lead to a suit for negligence. *Shannon v. Wilson*, 329 Ark. 143, 947 S.W.2d 349 (1997).

3-4-804. Effect of compliance.

(a) A permittee who seeks to qualify as a responsible permittee must provide to the Alcoholic Beverage Control Board evidence of compliance with the requirements of this subchapter. Upon satisfactory proof that the permittee has complied with the requirements, the board shall certify the permittee as a responsible permittee. Certification as a responsible permittee shall be renewed annually.

(b) The board may revoke or suspend a permittee's certification for noncompliance with this subchapter.

History. Acts 1993, No. 173, § 4.

3-4-805. Certification.

In order to qualify for certification, the permittee shall comply with the following requirements:

(1) Attend a course of instruction approved and certified by the Alcoholic Beverage Control Board which shall include subjects dealing with alcoholic beverages as follows:

(A) Education on the dangers of drinking and driving;

(B) State laws regarding the sale of alcoholic beverages for on-premises consumption or for off-premises consumption, or both;

(C) Methods of recognizing and dealing with underage customers;

(D) The development of specific procedures for:

(i) Refusing to sell alcoholic beverages to underage customers;

(ii) Assisting employees in dealing with underage customers;

(iii) Dealing with intoxicated customers; and

(E) Such other matters as may be deemed appropriate by the board;

(2) Require each employee who is authorized to sell alcoholic beverages in the normal course of his or her employment to complete the responsible permittee training course set out in subdivision (1) of this section within thirty (30) days of commencing employment; and

(3) Maintain employment records of the training of its employees required by this section.

History. Acts 1993, No. 173, § 5.

3-4-806. Mitigation of fines or penalties.

The Alcoholic Beverage Control Board shall consider certification of a permittee in the responsible permittee program in mitigation of administrative penalties or fines for a permittee's or employee's violation of state laws and regulations relating to the sale of alcoholic beverages.

History. Acts 1993, No. 173, § 6.

3-4-807. Fees.

(a) There is imposed on each permittee who applies and is certified as a responsible permittee an annual fee of twenty-five dollars (\$25.00).

(b)(1) All moneys collected under this subchapter shall be used to fund such server training programs as may be approved by the Alcoholic Beverage Control Board.

(2) Permittees attending such approved programs shall not be charged any additional fee by the program provider.

History. Acts 1993, No. 173, § 7.

SUBCHAPTER 9 — CATERER'S PERMIT**SECTION.**

3-4-901. Definitions.

3-4-902. Off-premise caterer's permit.

3-4-903. Qualifications for permit.

SECTION.

3-4-904. Gross receipts tax.

3-4-905. Regulations and forms.

3-4-901. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Alcoholic beverages" means any alcoholic beverage which is sold at retail in Arkansas;

(2) "Director" means the Director of the Alcoholic Beverage Control Division;

(3) "Off-premise caterer" means an individual or business entity which:

(A) Has been in business for more than one (1) year;

(B) Sixty percent (60%) or more of whose gross sales for the preceding year have been derived from food sales;

(C) Had gross food sales in excess of one hundred thousand dollars (\$100,000) for the preceding year;

(D) For a fee, prepares food and beverages to be consumed at private parties or other private functions; and

(E) Transports the food and beverages from the permitted premises to the premises where the private function is being held; and

(4) "Off-premise caterer's permit" means a license which authorizes the holder thereof to purchase alcoholic beverages from a permitted retail outlet, to transport the alcoholic beverages to a private function which is being catered by the permit holder, and to serve alcoholic beverages to attendees of a private function in conjunction with catered food.

History. Acts 1999, No. 1170, § 1.

3-4-902. Off-premise caterer's permit.

(a) There is hereby created an off-premise caterer's permit which may be issued by the Alcoholic Beverage Control Division to qualified off-premise caterers as defined in this subchapter.

(b) The annual fee for a permit shall be two hundred dollars (\$200), and it shall be renewed on an annual basis.

(c) The off-premise caterer's permit shall be posted conspicuously at the caterer's place of business.

History. Acts 1999, No. 1170, § 2.

3-4-903. Qualifications for permit.

(a) No off-premise caterer's permit shall be issued by the Alcoholic Beverage Control Division until an applicant for the permit provides proof that it has obtained a sales tax permit from the Revenue Division of the Department of Finance and Administration and has received approval of its permitted premises by the Department of Health.

(b) Furthermore, no off-premise caterer's permit shall be issued until the applicant provides proof of general liability insurance providing coverage in an amount of no less than two hundred thousand dollars (\$200,000).

History. Acts 1999, No. 1170, § 3.

3-4-904. Gross receipts tax.

Gross receipts tax shall be collected and remitted by the off-premise caterer on the total fee charged for each catered event.

History. Acts 1999, No. 1170, § 2.

3-4-905. Regulations and forms.

The Alcoholic Beverage Control Division is authorized to adopt reasonable rules and regulations implementing and facilitating the purpose and intent of this subchapter, to establish appropriate application forms, permit forms, and procedures, and to do any and all other things necessary to implement the provisions of this subchapter.

History. Acts 1999, No. 1170, § 4.

CHAPTER 5

BEER AND WINE — MANUFACTURE, SALE, AND TRANSPORTATION GENERALLY

SUBCHAPTER

1. GENERAL PROVISIONS.
2. BEER AND LIGHT WINE.
3. BEER — LICENSING OF RETAILERS.
4. NATIVE WINE GENERALLY.
5. NATIVE WINES — TRANSPORTATION.
6. NATIVE WINES — PRODUCTION AND SALE.
7. WINE PRODUCERS COUNCIL.
8. NATIVE WINE INDUSTRY DISASTER RELIEF ACT.
9. NATIVE WINES — INCENTIVE GRANTS.

SUBCHAPTER

10. NATIVE WINES — SUBSIDIES.
11. BEER — WHOLESALERS AND SUPPLIERS.
12. MICROBREWERY — RESTAURANTS.
13. NONRESIDENT BEER SELLER'S PERMITS.
14. ARKANSAS NATIVE BREWERY ACT.
15. TEMPORARY WINE CHARITABLE AUCTION LICENSE.
16. FREE TRADE AMONG SMALL WINERIES.

Publisher's Notes. This chapter contains provisions which exclusively regulate the manufacture, sale, and transportation of beer and wine. However, beer and wine are also regulated under provisions of this title governing "alcoholic beverages" generally, with the applicability of such provisions frequently dependent upon the alcoholic content of the beverage or, in the case of wine, its place of manu-

facture. Consequently, the provisions of this chapter must be read in conjunction with the remainder of the title in order to form a complete picture of the regulatory scheme as it applies to beer and wine. Specific provisions governing excise taxes on beer and wine, local option elections for beer, and on-premises consumption of wines are found in chapters 7-9.

RESEARCH REFERENCES

A.L.R. Choice of law as to liability of seller for injuries caused by intoxicated person. 2 A.L.R.4th 952.

Intoxicating liquors: products liability. 42 A.L.R.4th 253.

C.J.S. 67 C.J.S., Officers, § 218 et seq.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 3-5-101. Wholesalers of beer may sell malt.
- 3-5-102. Additional license to sell native wines not required.

SECTION.

- 3-5-103. Distribution areas.
- 3-5-104. Wine tasting events.
- 3-5-105. Beer festival permit.
- 3-5-106. Cabins and cottages.

A.C.R.C. Notes. References to "this chapter" in §§ 3-5-101 — 3-5-105 and subchapters 2 — 13 may not apply to § 3-5-106 which was enacted subsequently.

Effective Dates. Acts 1941, No. 304, § 2: approved Mar. 26, 1941. Emergency clause provided: "It is found that there is a great need for industries in the State of Arkansas for the purpose of decreasing unemployment, increasing revenues, and minimizing the consumption of intoxicating liquors, and that the manufacture and sale of native wines will relieve this need. It is therefore declared that an emergency exists, and this act, being necessary for the immediate preservation of the public peace, health, and safety, shall take effect and be in full force from and after its passage."

Acts 1977, No. 467, § 3: Mar. 17, 1977. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that more strict control over the distribution of beer within this state is needed; that the current statutory law in this area is inadequate; and that this act is required to give direction to the Alcoholic Beverage Control Board. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall be in full force and effect from the date of its approval."

Acts 1999, No. 1065, § 6: Emergency clause failed to pass. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly that present law is inadequate as

it relates to the serving of alcoholic beverages at festivals; that this act clarifies that law; and that this act should go into effect as soon as possible so that the benefits hereof will be available during the upcoming festival season. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of

its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

3-5-101. Wholesalers of beer may sell malt.

Any person, firm, or corporation having a permit to sell beer at wholesale shall be permitted to handle and sell to liquor retailers malt liquor containing greater than five percent (5%) of alcohol by weight.

History. Acts 1965, No. 165, § 1; A.S.A. 1947, § 48-504.3.

of spirituous, vinous (except wines), or malt liquor, § 3-4-605.

Cross References. Wholesalers, sales

3-5-102. Additional license to sell native wines not required.

Any retail liquor dealer who has been duly licensed as such shall have the right without any additional license fee to sell native wines manufactured from fruits, vegetables, and other products grown in the State of Arkansas.

History. Acts 1941, No. 304, § 1; A.S.A. 1947, § 48-625.

Cross References. Retail permits, § 3-4-604.

3-5-103. Distribution areas.

(a) All beer wholesalers in this state shall notify the Alcoholic Beverage Control Board of the brand name of all beer to be distributed and of the agreement between the applicant and the brewer as to the geographical territory wherein the applicant may distribute beer.

(b) In the event an agreement between a beer wholesaler and a brewer concerning the geographical territory within which the wholesaler may distribute beer is modified or changed as to the geographical territory, then the beer wholesaler shall notify the Alcoholic Beverage Control Board of a new agreement or modification of agreement within sixty (60) days of the modification agreement or new agreement.

(c) It shall be unlawful for any wholesale beer distributor to sell beer outside the geographical territory described in the notice given the board.

History. Acts 1977, No. 467, § 1; A.S.A. 1947, § 48-513.1.

3-5-104. Wine tasting events.

(a)(1) Native wineries and licensed wine and spirits wholesalers, upon prior approval by the Alcoholic Beverage Control Division, shall be allowed to conduct wine tasting events for educational and promotional purposes at any location in this state without obtaining a wine sampling permit under this section if written notice is given to the division at least ten (10) days prior to the event.

(2) Requests for approval to conduct wine tasting events must be received by the division at least ten (10) days prior to the event.

(b)(1) A person, other than a native winery, licensed to sell wine, beer, or spirits under a retail liquor permit as defined in § 3-4-604 may conduct tasting events for educational and promotional purposes on the person's premises after obtaining a sampling permit from the division as provided in subsection (f) of this section.

(2)(A) Wine, beer, or spirits purchased by the person permitted under this section to conduct a tasting event shall not be exempt from the gross receipts and use taxes.

(B) If the person removes wine, beer, or spirits from his or her inventory for use in a tasting event, the wine, beer, or spirits shall be subject to the gross receipts taxes as a withdrawal from stock.

(3) A wholesaler may not:

(A) Offer special discounts on wine, beer, or spirits sold for the purpose of a wine tasting event; or

(B) Provide wine, beer, or spirits without charge to a person licensed to sell wine at retail for the purpose of a tasting event.

(c) No tasting event may be held pursuant to this section in any facility licensed by the division.

(d) No motor vehicle in which supplies for tasting events are carried and no person shall be subject to arrest nor shall the supplies be subject to seizure for over possession in a dry area.

(e) The criminal penalties for drinking in public as prescribed by § 5-71-212(c) are not applicable to any tasting event approved by the division pursuant to this section.

(f)(1) The Director of the Alcoholic Beverage Control Division may issue a sampling permit if the applicant:

(A) Is licensed by the director to sell wine, beer, spirits, or any combination, at retail; and

(B) Pays a license fee of:

(i) Five hundred dollars (\$500) for either a wine license, beer license, or spirits license; or

(ii) One thousand dollars (\$1,000) for a combined wine, beer, and spirits license.

(2)(A) The sampling permit allows the person to conduct tasting events on the person's premises during regular hours of operation. A sampling permit shall expire on June 30 of each year.

(B) The samples shall be limited to a total of:

(i) Three (3) one-half ounce (0.5 oz.) wine servings per customer each day for on-premises consumption;

- (ii) Two (2) two ounce (2 oz.) beer servings per customer each day for on-premises consumption; and
 - (iii) Two (2) one-half ounce (0.5 oz.) spirit servings per customer each day for on-premises consumption.
- (3) The director may promulgate rules to administer and enforce this section.

History. Acts 1993, No. 1258, §§ 1-4; 2005, No. 1544, § 1; 2007, No. 455, § 1.

Publisher's Notes. Acts 1993, No. 1258, § 5, provided: "Arkansas Code §§ 3-8-209, 3-8-311, 3-8-312, and 3-3-306 are repealed to the extent they conflict with this act."

Amendments. The 2005 amendment, in (a)(1), substituted "licensed wine and spirits" for "licensed and wine spirits," "without obtaining a wine sampling permit under this section if" for "provided

that" and "ten (10)" for "five (5)"; substituted "ten (10) days" for "two (2) weeks" in (a)(2); added present (b) and (f); and redesignated former (b)-(d) as present (c)-(e).

The 2007 amendment deleted "wine" preceding "tasting" and inserted "beer, or spirits" throughout (b), (c) and (d); in (d), deleted "in possession of supplies for wine tasting events approved pursuant to this section" following "person"; rewrote (f)(1) and (f)(2); and made stylistic and related changes.

3-5-105. Beer festival permit.

(a)(1) The Director of the Alcoholic Beverage Control Division may issue a temporary permit to authorize the following:

(A) A festival to be conducted over a period not to exceed three (3) days;

(B) The consumption by persons of legal age of beer and malt beverage, as defined by § 3-5-1202, on the festival grounds;

(C) The permittee to charge an entry fee for persons wishing to attend the festival and to distribute beer and malt beverages on any day of the week, including Sunday, as provided for in this section, pursuant to the following conditions:

(i) The distribution of beer and malt beverages as authorized in this section, shall be limited to the secure area as prescribed in subsection (b) of this section; and

(ii) The distribution of beer and malt beverages on Sunday, as authorized in this section, shall be limited to the hours between 12:00 p.m. and 10:00 p.m. central time and be limited to those areas where the retail sale and consumption of alcoholic beverages on Sunday has been approved pursuant to Arkansas law;

(D) The festival permittee to designate the permitted area on the festival grounds to be approved by the director, such that it is a secure area which will not allow unsupervised access and egress; and

(E) Participation in this event by any legal brewery, microbrewery, microbrewery-restaurant, distributor, wholesaler, or brewpub, whether or not they are currently registered or their product is licensed in the State of Arkansas.

(2)(A) The director shall not issue this permit if the proposed location is in a dry area.

(B) The director may issue this permit only to a charitable or nonprofit organization as provided for by the Alcoholic Beverage

Control Board, except that this permit may not be issued to a charitable or nonprofit organization holding a private club license.

(3) The permittee shall maintain the permit in conjunction with any other legally obtained permit.

(b)(1) The permittee shall provide to the board no later than one (1) week prior to the event a complete listing of those nonlicensed participants and the products they will be providing. The list shall include proof of delivery, such as an invoice, from the participant which will denote such product or products being provided to the festival.

(2) The permittee may reimburse participants, if so desired, for the cost of the product provided for the licensed event.

(3)(A) The permittee shall designate one (1) wholesale distributor currently licensed in Arkansas to act as a temporary warehouse for those nonlicensed products to be stored prior to or following the event.

(B) Those products shall be stored for a period not to exceed one (1) week prior to and following the event.

(C) The designated wholesaler shall not be in violation of § 3-3-216, § 3-5-221, § 3-5-1307, or § 3-7-104.

(4)(A) The designated wholesaler shall pay the Miscellaneous Tax Section of the Office of Excise Tax Administration of the Department of Finance and Administration a wholesalers tax of \$7.507808 per barrel equal to thirty-one (31) gallons for each barrel of beer or malt beverage provided for this festival by any participant whose product is not currently licensed or registered in the State of Arkansas.

(B) This tax shall be paid in conjunction with the currently required miscellaneous tax and shall be paid by the same means as are currently required in the normal course of paying the miscellaneous tax.

(C) The designated wholesaler shall be reimbursed for this tax by the permittee and may collect a handling fee for services rendered in warehousing such nonlicensed product for this festival.

(c) Neither the participants in this event nor their products need be registered under § 3-2-409, § 3-5-1303, or § 3-7-106, nor shall they be in violation of § 3-3-216, § 3-3-304 [repealed], § 3-3-305 [repealed], § 3-5-205, § 3-5-210, § 3-5-211, § 3-5-216, § 3-5-217, or § 3-5-221 for this event only.

(d) The festival participants and attendees while on the festival grounds shall not be found to be in violation of § 5-71-212(c) or (d) regarding public consumption. This does not exclude any participant or attendee from being found in violation of § 5-71-212(a) or (b) regarding public intoxication.

(e) The permittee shall pay to the board a fee of fifty dollars (\$50.00) per event.

(f) Every provision of this section shall be subject to all beer and malt beverage laws and regulations, except that conflicting beer and malt

beverage laws and regulations shall be inapplicable to any provision of this section to the extent that they conflict herewith.

History. Acts 1999, No. 1065, § 1.

3-5-106. Cabins and cottages.

(a) For purposes of this section, “cabins and cottages” means corporations, partnerships, individuals, limited liability corporations, and other legal entities whose primary function is to provide overnight accommodations to the public, not exceeding a total of twenty (20) guest rooms on the premises, whether operated by the business owner or not.

(b) Cabins and cottages are authorized to give a complimentary bottle of wine to their guests.

History. Acts 2001, No. 1487, § 1.

A.C.R.C. Notes. References to “this chapter” in §§ 3-5-101 — 3-5-105 and

subchapters 2 — 13 may not apply to this section which was enacted subsequently.

SUBCHAPTER 2 — BEER AND LIGHT WINE

SECTION.

- 3-5-201. Purpose.
- 3-5-202. Definitions.
- 3-5-203. Penalties.
- 3-5-204. Manufacture, sale, etc., a privilege.
- 3-5-205. Privilege tax — Levy and collection — Exception.
- 3-5-206. Issuance of state permit.
- 3-5-207. Scope of state permit.
- 3-5-208. Duration of state permits.
- 3-5-209. Transfer of permit — Dancing privileges — Inspection fee.
- 3-5-210. Sale or manufacture without state permit unlawful.
- 3-5-211. Local permit required.
- 3-5-212. County and municipal retailers’ permits.
- 3-5-213. Cities and towns — Regulation of retailers.
- 3-5-214. Oath by applicant for permit — Prohibited interests.

SECTION.

- 3-5-215. Qualifications of retail permittees.
- 3-5-216. Warehousing of beer and light wines.
- 3-5-217. Transportation of products.
- 3-5-218. Duplicate bills of lading.
- 3-5-219. Records and reports.
- 3-5-220. Sale in original, labeled containers.
- 3-5-221. Miscellaneous prohibited practices — Penalties.
- 3-5-222. Nudity on premises prohibited — Penalty — Regulations.
- 3-5-223. Actions to recover taxes.
- 3-5-224. Disposition of funds.
- 3-5-225. Additional administrative personnel.
- 3-5-226. On-premises sales by brewery.
- 3-5-227. Registration of beer kegs for off-premises consumption.

Publisher’s Notes. This subchapter originally applied to beer and light wine of an alcoholic content not in excess of 3.2% by weight. Pursuant to § 3-1-103, this subchapter was made to apply to malt and vinous beverages having an alcoholic content of not more than 5% by weight.

Section 3-5-401 et seq. regulates the manufacture, sale, and transportation of

all wines made from grapes, berries, fruits, and vegetables. The scope of those sections is not limited by the alcoholic content of such wines, and it is not clear whether § 3-5-401 et seq. was intended to supersede this subchapter with respect to the regulation of the manufacture, sale, and transportation of light wines.

Effective Dates. Acts 1933 (1st Ex.

Sess.), No. 7, § 30: approved Aug. 24, 1933. Emergency clause provided: "It is found as a fact that since the Congress of the United States has authorized the manufacture and sale of light wines and beers as herein defined, they are being sold throughout the state, and if operation of this act is delayed they will be generally sold, possessed, transported, and used, with prevention and proper policing impossible; and it is further found that the tax revenues provided for in this act are immediately needed by the state to prevent deficits in the matters that are the objects of the taxes stated herein; an emergency is therefore declared and it is necessary for the preservation of the public peace, health, and safety that this act shall become effective without delay, and this act shall take effect and be in force at once."

Acts 1937, No. 261, § 3: Mar. 17, 1937. Emergency clause provided: "It is found that a great number of the places throughout the State of Arkansas where wines and beer are licensed to be sold and dispensed are being so operated and conducted as to be inimical to the public peace, health, and safety and that this act is consequently necessary for the preservation of the public peace, health, and safety; therefore, an emergency is hereby declared to exist, and this act shall be effective immediately upon its adoption and approval."

Acts 1971, No. 585, § 34: approved Apr. 6, 1971. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that in order to establish an orderly procedure which will insure the monthly and quarterly distribution of funds for the necessary services and operations of the state government, as provided for in this act, it is necessary that the provisions of this act become effective immediately; that under the provisions of this act seriously needed improvements for many of our public institutions are contemplated, and only the provisions of this act will provide such funds which will be adequate to alleviate this situation; and that only the provisions of this act will correct many of our financial difficulties, and which otherwise may deprive the citizens of this state from receiving the benefits for which the operation of state government contemplates. Therefore, an

emergency is hereby declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall take effect and be in full force from and after its passage."

Acts 1983, No. 420, § 3: Mar. 13, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that permits issued by the Alcoholic Beverage Control Division should be renewable annually no later than August 31; and that this act is immediately necessary to so provide. Therefore, an emergency is hereby declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 606, § 14: July 1, 1991. Emergency clause provided: "It is hereby found and determined that numerous persons who are resident aliens of the United States desire to operate establishments that dispense alcoholic beverages in the State of Arkansas and that the same are presently prohibited from obtaining a license in their name. It is further found and determined that the requirement of United States citizenship in order to maintain these establishments poses a burden upon commerce and restricts the number of persons who are able to contribute to the overall economy of the State of Arkansas. It is further found and determined that numerous national corporations are hindered in their operations in that they cannot have newly transferred managers or other key employees assume positions of responsibility within their local outlets since those persons do not meet the two (2) year residency requirement and that such requirement poses an unreasonable burden on the conduct of business in this state as it relates to alcohol beverage outlets. It is further found that the present process of applying for or renewing ABC licenses by requiring proof of payment of personal property taxes is cumbersome, unnecessary, and has no direct relationship to the operation of the ABC permitted outlet. It is further found and determined that there are presently numerous conflicting requirements which are applied to applicants for various retail licenses issued by the state ABC Division and that it is necessary and proper that such permit requirements be made uniform. That all of the aforementioned en-

cumbrances are a burden on the transaction of commerce in the state and upon the efficient administration of government in the state. Therefore, an emergency is hereby declared to exist and this act being

necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect on and after July 1, 1991."

CASE NOTES

Alcoholic Content.

Alcoholic content of a malt beverage controls in determining whether it should be taxed, regulated, and controlled as a "spirituous, vinous, and malt liquor" un-

der Acts 1935, Nos. 108 and 109 or as "beer and light wines" under this subchapter. *Scurlock v. Central Distribs., Inc.*, 223 Ark. 954, 269 S.W.2d 790 (1954).

3-5-201. Purpose.

(a) The purpose of this subchapter is to legalize the manufacture and sale within this state of beer and light wine of an alcoholic content not in excess of five percent (5%) by weight and to so regulate the business of manufacturing and selling such liquors as to prevent the illicit manufacture and consumption of liquors having an alcoholic content in excess of five percent (5%) by weight, the manufacture and sale of which it is not the purpose of this subchapter to legalize.

(b) It is further the purpose of this subchapter to impose certain licenses, fees, and taxes on, and to regulate, such businesses.

History. Acts 1933 (1st Ex. Sess.), No. 7, §§ 1, 10; Pope's Dig., §§ 14192, 14202; A.S.A. 1947, §§ 48-501, 48-501n.

Sess.), No. 7, § 29, provided in part that all local or special laws forbidding the sale of light wines and beer were repealed.

Publisher's Notes. Acts 1933 (1st Ex.

3-5-202. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Person" means one (1) or more persons, a company, a corporation, a partnership, a syndicate, or an association;

(2) "Consumer" means a person who receives or in any way comes into possession of beer and light wines as defined in this section for the purpose of consuming them, giving them away, or distributing them in any way other than by sale, barter, or exchange;

(3) "Beer" means any fermented liquor made from malt or any substitute therefor and having an alcoholic content not in excess of five percent (5%) by weight;

(4) "Light wine" means the fermented juice of grapes or other small fruits, including berries, and having an alcoholic content not in excess of five percent (5%) by weight;

(5) "Brewery" means any place where beer as defined by this section is manufactured for sale or consumption;

(6) "Winery" means any place where light wine as defined by this section is manufactured for sale or consumption;

(7) “Distributor” means any person who receives, either from within or from without this state, light wines and beer as defined by this section for the purpose of distributing them to the dealer either in the original stamped packages as received from the brewery or winery or in bottles as received from the bottler;

(8) “Regulation” or “proper regulation” means such reasonable regulations authorized by law and made and promulgated by the Director of the Alcoholic Beverage Control Division with the approval of the Alcoholic Beverage Control Board;

(9) “Intoxicating liquor” means vinous, ardent, malt fermented liquor or distilled spirits with an alcoholic content in excess of five percent (5%) by weight;

(10) “Wholesale dealer and distributor” means any person who sells beer or light wines to retail dealers in quantities of three (3) gallons or more;

(11) “Retail dealer” means any person who sells to the consumer light wines or beer in quantities of less than sixteen (16) gallons;

(12) “Warehouse” means a house or building equipped to maintain such temperature as may be required by the rules and regulations promulgated by the director for the storage of beer or wine and a place at which taxes on the beer or wine shall be collected; and

(13)(A) “Home-brewed” means beer made from malted barley, wheat, or cereal grains, or any substitute therefor, and having an alcoholic content not in excess of five percent (5%) by weight, brewed for consumption by the manufacturer and his or her family and guests, but not for sale.

(B) Any manufacturer of home-brewed beer must have attained twenty-one (21) years of age.

History. Acts 1933 (1st Ex. Sess.), No. 7, § 2; Pope’s Dig., § 14194; A.S.A. 1947, § 48-503; Acts 1995, No. 1051, § 1.

Publisher’s Notes. The printed Acts of 1933 (1st Ex. Sess.) contained an erroneous

definition of the term “light wine” which merely duplicated the definition of beer. The definition of “light wine” in this section is that which appears in the enrolled act.

CASE NOTES

Cited: McKeown v. State, 197 Ark. 454, 124 S.W.2d 19 (1939); Leach v. Cook, 211 Ark. 763, 202 S.W.2d 359 (1947); Carter v.

Reamey, 232 Ark. 211, 335 S.W.2d 298 (1960).

3-5-203. Penalties.

(a) Any violation of the provisions of this subchapter or of any rule or regulation of the Director of the Alcoholic Beverage Control Division or the violation of any rule or regulation of city legislative bodies relative to the conduct of this business shall be a Class B misdemeanor.

(b) Any person convicted of violating any provision of this subchapter defined as a misdemeanor by this subchapter and for which no specific punishment is provided shall be punished as otherwise provided by law.

History. Acts 1933 (1st Ex. Sess.), No. 7, §§ 17, 29; Pope's Dig., §§ 14209, 14222; A.S.A. 1947, §§ 48-525, 48-526; Acts 2005, No. 1994, § 371.

Amendments. The 2005 amendment, in (a), inserted "Class B" and deleted the former second sentence in (a), which stated: "The punishment shall be by a fine

of not more than five hundred dollars (\$500) and imprisonment for not more than six (6) months in the discretion of the court."

Cross References. Misdemeanors, classification, § 5-1-107.

Misdemeanors, imprisonment and fines, §§ 5-4-201, 5-4-401.

CASE NOTES

ANALYSIS

Revocation of License.
Special Acts.

Revocation of License.

The former provisions of this section empowering the convicting court to revoke liquor licenses were repealed by the enactment of § 3-2-212, which vests the same power exclusively in the Director of the

Alcoholic Beverage Control Division. State v. Lawrence, 246 Ark. 644, 439 S.W.2d 819 (1969).

Special Acts.

Special acts prohibiting the sale of intoxicating liquors within three miles of the University of Arkansas were expressly repealed by Acts 1933 (1st Ex. Sess.), No. 7, § 29. State ex rel. Trimble v. Kantas, 191 Ark. 22, 82 S.W.2d 847 (1935).

3-5-204. Manufacture, sale, etc., a privilege.

The business of manufacturing, handling, receiving, distributing, or selling the products defined in § 3-5-202 is declared under the Constitution and laws of the State of Arkansas to be a privilege.

History. Acts 1933 (1st Ex. Sess.), No. 7, § 1; Pope's Dig., § 14192; A.S.A. 1947, § 48-501.

Cross References. Exhibition of permit, § 3-4-102.

3-5-205. Privilege tax — Levy and collection — Exception.

(a) For the privilege of doing business, there shall, each fiscal year beginning July 1, be assessed, levied, and collected:

(1) From each wholesale dealer or broker, or distributor in light wine or beer, a special tax of two hundred fifty dollars (\$250) for each county in which the broker, distributor, or wholesale dealer operates. However, in no event shall the tax exceed one thousand dollars (\$1,000) for any one (1) broker, distributor, or wholesale dealer;

(2) From each manufacturer of beer a special tax of five hundred dollars (\$500); and

(3) From each retail dealer of nonintoxicating liquor, a special tax of two hundred dollars (\$200).

(b) The tax shall be due and payable at each place where the business of the wholesale dealer, manufacturer, distributor, or retail dealer, as the case may be, is carried on.

(c) All special taxes shall become due and payable on or before June 30 of each calendar year for the fiscal year beginning July 1 or on commencing business on which the tax is imposed.

(d) The tax shall be levied, assessed, and collected by such methods, within the limitations prescribed in this subchapter, and under such regulations as may be regularly provided.

(e) However, a grower of grapes and other fruits may manufacture and sell wine upon the premises of the grower in original packages of not less than one-fourth ($\frac{1}{4}$) of a gallon from grapes and other fruits actually grown by the party so manufacturing wine upon his or her own premises, free from the license fees and taxes provided in this subchapter. A "grower" is defined to be one who actually grows and produces grapes and other fruits upon his own premises or upon the premises occupied by him or her as a tenant.

(f)(1) However, any person in this state may manufacture home-brewed beer or home-manufactured wine:

(A) Upon his or her own premises free from the license fees and taxes provided in this subchapter;

(B) For consumption by the manufacturer and his or her family and guests, but not for sale; and

(C) In quantities per calendar year not to exceed:

(i) Two hundred (200) gallons if there are two (2) or more adults in the household; or

(ii) One hundred (100) gallons if there is only one adult in the household.

(2) While the manufacture of beer or wine is declared to be a privilege, the home manufacture of beer or wine in quantities not to exceed two hundred (200) gallons per calendar year shall be exempted from §§ 3-4-101, 3-4-602, 3-5-205(a)-(e), 3-5-206, and 3-5-211.

History. Acts 1933 (1st Ex. Sess.), No. 7, §§ 4, 11; Pope's Dig., §§ 14196, 14203; Acts 1953, No. 372, § 1; 1957, No. 375, § 1, as added by 1953, No. 118, § 36(F), as added by 1971, No. 585, § 12; 1983, No. 420, § 1; A.S.A. 1947, §§ 48-504, 48-507, 48-313.1; Acts 1993, No. 528, §§ 1, 2; 1995, No. 1051, § 2; 2001, No. 1813, § 1.

Cross References. Native brewery, exempt from certain taxes, § 3-5-1408.

Renewal of permits, time of payment, § 3-4-216.

Tax on beer, § 3-7-104.

CASE NOTES

Wholesalers.

This section has been construed to require each wholesale distributor of light wines and beer to pay a tax of \$50.00 for each county in which he operates but a

maximum fee of \$250 for each warehouse serving five counties or more. *Watson v. Harper*, 188 Ark. 996, 68 S.W.2d 1019 (1934).

3-5-206. Issuance of state permit.

(a) The payment of the special tax provided in § 3-5-205 shall be evidenced by a permit issued by the Director of the Alcoholic Beverage Control Division.

(b) A permit shall be applied for by the special taxpayer and issued by the director on such forms and under such regulations as may be prescribed.

History. Acts 1933 (1st Ex. Sess.), No. 7, § 4; Pope's Dig., § 14196; Acts 1953, No. 372, § 1; 1957, No. 375, § 1, as added by 1953, No. 118, § 36(F), as added by 1971, No. 585, § 12; A.S.A. 1947, § 48-504.

3-5-207. Scope of state permit.

(a) Except as provided in subsection (b) of this section, any permit issued under the provisions of § 3-5-206 authorizing the sale of light wines or beer for consumption under the provisions prescribed in the permit shall be construed to authorize the sale of such liquor by the bottle, by the glass or draught, and in or from the original package.

(b) No permit shall be required for the home manufacture of beer or wine in quantities not to exceed two hundred (200) gallons per calendar year under §§ 3-4-101, 3-4-602, 3-5-206, or 3-5-211 as may otherwise be required of other manufacturers.

(c) Any permit issued under the provisions of § 3-5-206 authorizing the manufacture of beer shall allow an Arkansas beer manufacturer to sell and ship to business entities licensed and qualified in the other states to receive beer products brewed in Arkansas.

History. Acts 1933 (1st Ex. Sess.), No. 7, § 15; Pope's Dig., § 14207; A.S.A. 1947, § 48-520; Acts 1995, No. 1051, § 3; 1997, No. 1061, § 1; 2001, No. 1813, § 2.

3-5-208. Duration of state permits.

(a) Permits issued under the provisions of § 3-5-206 for the privilege of doing business as mentioned in that section shall be for an indeterminate period.

(b) The permit fees levied by § 3-5-205 shall be paid annually as therein provided. So long as the annual permit fees are paid, all permits issued shall remain in full force and effect until revoked or suspended.

History. Acts 1953, No. 247, § 1; A.S.A. 1947, § 48-504.1.

3-5-209. Transfer of permit — Dancing privileges — Inspection fee.

Any person requesting a transfer of an existing retail liquor or beer permit to another location or any person requesting dancing on legally licensed premises shall be required to pay a five dollar (\$5.00) special inspection fee which shall be payable at the time the application for transfer is made.

History. Acts 1933 (1st Ex. Sess.), No. 7, § 4; Pope's Dig., § 14196; Acts 1953, No. 372, § 1; 1957, No. 375, § 1, as added by 1953, No. 118, § 36(F), as added by 1971, No. 585, § 12; A.S.A. 1947, § 48-504.

3-5-210. Sale or manufacture without state permit unlawful.

(a) Except as provided in subsection (b) of this section, any person that shall brew, manufacture, or sell any liquor as defined by this subchapter without first having secured a permit from the Director of the Alcoholic Beverage Control Division authorizing the brewing, manufacturing, or sale of such liquor shall be guilty of a Class B misdemeanor.

(b) Home manufacturers of beer or wine in quantities not to exceed two hundred gallons (200 gals.) per year shall be exempt as provided in §§ 3-5-205(f)(2) and 3-5-207(b) from the permit requirements for the manufacture of beer and wine and shall not be prosecuted for brewing or manufacturing beer or wine without a permit.

History. Acts 1933 (1st Ex. Sess.), No. 7, § 12; Pope's Dig., § 14204; A.S.A. 1947, § 48-513; Acts 1995, No. 1051, § 4; 2001, No. 1813, § 3; 2005, No. 1994, § 372.

Amendments. The 2005 amendment, in (a), inserted "Class B" and deleted "and shall be punished as provided in § 3-5-203" from the end.

3-5-211. Local permit required.

It shall be unlawful for any person to sell, distribute, or manufacture the liquors prescribed in this subchapter without first having made application to and obtained a permit from the county or city where the business is to be conducted, and the authority is herein delegated to the counties and cities.

History. Acts 1933 (1st Ex. Sess.), No. 7, § 24; Pope's Dig., § 14216; A.S.A. 1947, § 48-515.

CASE NOTES

Cited: Brown v. Cheney, 233 Ark. 920, 350 S.W.2d 184 (1961).

3-5-212. County and municipal retailers' permits.

(a)(1) Before any person shall be authorized to offer for sale at retail the liquors as prescribed in this subchapter in any county, or if within the incorporated limits of any town or city, then he or she shall apply to and secure a permit or license from the county clerk if outside incorporated limits of a city or town or to the city clerk or town recorder if within the incorporated limits of a city or town, a permit or license.

(2) The county clerk or city clerk or recorder shall charge for the permit or license a sum not in excess of:

(A) Fifteen dollars (\$15.00) for a retailer whose total gross annual sales do not exceed one thousand dollars (\$1,000); and

(B) Twenty dollars (\$20.00) for retailers whose total gross annual sales shall not be in excess of two thousand dollars (\$2,000).

(3) The city clerk or recorder or county clerk shall be empowered to collect from the retailers an additional five dollars (\$5.00) for each one

thousand dollars (\$1,000) gross annual business in excess of two thousand dollars (\$2,000).

(b) The permits to retailers shall not be granted or issued by any city clerk or recorder or any county clerk until the retailer shall exhibit the state permit granted or issued to him or her by the Director of the Alcoholic Beverage Control Division or the director's agent.

(c) The state permit shall be prima facie evidence of the retailer's right to apply for and purchase a city or county permit, and it shall be unlawful for any city clerk, recorder, or county clerk to refuse to issue the permit upon proper application by the retailer.

(d) Whenever it shall appear to the city clerk or recorder or to the county clerk that a retail dealer has secured a permit for fifteen dollars (\$15.00) when a larger amount should have been paid therefor, he or she require the payment of the difference or cancel the permit.

(e) The tax shall be due and payable at each place where the retail dealer carries on business.

(f) The city clerk or county clerk charged with the duty of collecting the license fees shall notify the director of the identity of retailers failing to comply with the provisions of this section. The director shall then notify wholesale dealers to discontinue sales to delinquent retailers. When the license fee is paid, the appropriate clerk shall notify the director that the retailer has paid the fee. The director shall notify wholesalers to resume sales to the retailers.

(g) Any wholesaler who continues to sell to a retailer after notification from the director to discontinue sales shall be subject upon conviction to a fine of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000).

History. Acts 1933 (1st Ex. Sess.), No. 7, § 25; Pope's Dig., § 14217; Acts 1955, No. 353, § 1; A.S.A. 1947, § 48-516.

3-5-213. Cities and towns — Regulation of retailers.

All incorporated cities and towns in the State of Arkansas are authorized to pass proper ordinances governing the issuance and revocation of licenses for the retail sale of the liquors as prescribed in this subchapter, within the corporate limits. Cities and towns may impose additional restrictions, fixing zones and territories and providing hours of opening and closing and such other rules and regulations as will promote public health, morals, and safety which they may by ordinance provide.

History. Acts 1933 (1st Ex. Sess.), No. 7, § 27; Pope's Dig., § 14219; A.S.A. 1947, § 48-517.

3-5-214. Oath by applicant for permit — Prohibited interests.

(a) Before any permit authorized by this subchapter shall be issued and delivered to any applicant therefor, the applicant shall make and subscribe to an oath that:

(1) He or she will not allow any intoxicating liquor as defined by this subchapter of any kind or character, including beer, wine, and distilled spirits, having an alcoholic content in excess of five percent (5%) by weight to be kept, stored, or secreted in or upon the premises described in the permit; and

(2) The applicant will not otherwise violate any law of this state or knowingly allow any other person to violate any statute while in or upon the premises.

(b) No manufacturer, distributor, or wholesale dealer to whom or to which this subchapter applies shall have any direct or indirect interest in the business of any person, firm, or corporation applying for and securing or holding a permit as a retail dealer, or in the furnishings or fixtures used in his or her or its place of business, or any lien thereon.

History. Acts 1933 (1st Ex. Sess.), No. 7, § 13; Pope's Dig., § 14205; A.S.A. 1947, § 48-514.

CASE NOTES**Failure to Take Oath.**

Failure to take oath provided by this section would be sufficient reason in itself

to cancel a permit. *Blum v. Ford*, 194 Ark. 393, 107 S.W.2d 340 (1937).

3-5-215. Qualifications of retail permittees.

No permit shall be granted to any permittee by the state or any county or municipality to a person who is not a resident of the State of Arkansas on the date of application.

History. Acts 1933 (1st Ex. Sess.), No. 7, § 24; Pope's Dig., § 14216; A.S.A. 1947, § 48-515; Acts 1991, No. 606, § 4.

Publisher's Notes. Acts 1991, No. 606, § 11, provided: "It is the intent of this law to no longer require citizenship of the United States in order for a person to hold certain ABC licenses and to eliminate the requirement that persons be a resident of the State of Arkansas for two (2) years prior to the time that they make application for an ABC license. It is also the intent of this law that persons no longer be required to be registered voters in the county in which the permit is located and it is further intended that a person must either reside in the county where the

premises is located or live within twenty-five (25) miles of the address of the permitted outlet. It is also the intent of this legislation that proof of payment of personal property taxes to the individual counties will no longer be required in order for a person to apply for or renew an ABC license. It is the further intent of this law that various application requirements regarding convicted felon status, status as it relates to violation of liquor laws of this state or any other state and revocation of permits shall be made uniform among various permits issued by the ABC Division. Therefore, any laws that may conflict with this act shall be and the same hereby are repealed."

CASE NOTES

Sale of Premises.

Contract for sale of liquor store to non-resident purchasers was not illegal where purchasers knew at the time of the purchase that as nonresidents a liquor permit

could not be transferred or issued to them. *Smith v. Ferguson*, 302 Ark. 388, 790 S.W.2d 162 (1990).

Cited: *Brown v. Cheney*, 233 Ark. 920, 350 S.W.2d 184 (1961).

3-5-216. Warehousing of beer and light wines.

(a) Light wines or beer upon which the tax prescribed by this subchapter has not been paid may be transported from without this state to a distributor within this state and may be received and kept in storage at a distributor's place of business in this state, upon the execution of such bond as the Director of the Alcoholic Beverage Control Division may by regulation prescribe.

(b) The Director of the Alcoholic Beverage Control Division shall:

(1) Require the storage of all beer or wine in state-supervised warehouses, designated and licensed by the Director of the Alcoholic Beverage Control Division before the sale thereof;

(2) Provide for the supervision, inspection, and collection of the costs thereof of the designated warehouses;

(3) Declare it to be unlawful to offer for sale any beer or wine not thus warehoused, inspected, and approved; and

(4) Confiscate and destroy any beer or wine not thus warehoused, inspected, and approved or which in any manner violates any provision of this subchapter.

(c) The Director of the Department of Finance and Administration shall provide for the collection of all fees and taxes imposed by this subchapter upon beer and wine at designated warehouses as provided for in subdivision (b)(1) of this section.

(d) All distributors and wholesalers licensed as provided in § 3-5-206 shall be given a warehouse permit as provided in this section.

(e) Every person otherwise qualified and who can furnish proper bond and a suitable warehouse shall be entitled to a license as a wholesale distributor of beer.

History. Acts 1933 (1st Ex. Sess.), No. 7, § 7; Pope's Dig., § 14199; A.S.A. 1947, § 48-508.

Cross References. Possession, trans-

portation, or importation of beer, rules and regulations, § 3-7-404(c).

Transportation of untaxed liquor prohibited, § 3-3-216.

3-5-217. Transportation of products.

(a)(1) It shall be lawful to transport the products defined in § 3-5-202 if the tax upon the products has been paid.

(2) It shall be lawful for any brewery in the State of Arkansas to transport and ship beer out of state by common carrier or other appropriate parcel delivery service and for common carriers and other appropriate parcel delivery services to accept beer from Arkansas

breweries for delivery outside the State of Arkansas to business entities licensed and qualified in the other states.

(b) It shall be unlawful to transport into, out of, or within this state any light wines or beer upon which the state tax prescribed by this subchapter has not been paid except:

(1) Where light wines or beer, having first been ordered by or sold to a distributor within this state, is being shipped in due course of business from a brewer, manufacturer, dealer, or distributor without this state to a bonded distributor within this state; or

(2) Unless the shipment is in interstate commerce and is passing from a point of origin outside of this state through this state into another state.

(c) The transportation of such liquor into or within this state in all cases shall be under such regulations as may be regularly prescribed.

History. Acts 1933 (1st Ex. Sess.), No. 7, §§ 1-A, 9; Pope's Dig., §§ 14193, 14201; A.S.A. 1947, §§ 48-502, 48-510; Acts 1997, No. 1061, § 2.

Publisher's Notes. This section may be affected by § 3-3-216.

3-5-218. Duplicate bills of lading.

(a) Every railroad company, express company, air transportation company, motor transportation company, steamboat company, or other transportation companies who shall transport into, wholly within, or out of this state, any light wines or beer, whether brewed or manufactured within this state or without this state, when requested by the Director of the Alcoholic Beverage Control Division shall furnish the director a duplicate of the bill of lading covering the receipt for the liquor. This duplicate bill shall show the name of the brewer, manufacturer, or distributor, the name and address of consignor and consignee, the date and place received, and destination and quantity of the liquor received from the manufacturer, brewer, or other consignor for shipment from any point within or without this state to any point within this state.

(b) Any railroad company, express company, air transportation company, motor transportation company, or steamboat company or other transportation companies failing to comply with the requirements of this subchapter shall forfeit and pay to the State of Arkansas the sum of one hundred dollars (\$100) for each and every such failure, to be recovered in any court of competent jurisdiction. The director is authorized and empowered to sue in his or her name on the relation and for the use of the State of Arkansas for such recovery.

History. Acts 1933 (1st Ex. Sess.), No. 7, § 18; Pope's Dig., § 14210; A.S.A. 1947, § 48-511.

3-5-219. Records and reports.

(a) Retail and wholesale dealers in light wines or beer, brewers, manufacturers, and distributors shall keep such records and make such reports with respect to the receipt of and the handling of such liquors as the Director of the Alcoholic Beverage Control Division may by regulation prescribe.

(b) The director shall cause a record to be kept of the names and places of business of persons engaged in the brewing or manufacturing and in the sale of beer.

(c) He or she shall also cause a record to be kept of all beer brewed or manufactured and sold, and the amount thereof of each brewer or manufacturer, or sold by every dealer other than a brewer or manufacturer and a record of all forfeitures collected and all expenses incurred in the collection thereof.

History. Acts 1933 (1st Ex. Sess.), No. 7, §§ 8, 21; Pope's Dig., §§ 14200, 14213; A.S.A. 1947, §§ 48-509, 48-512.

3-5-220. Sale in original, labeled containers.

It shall be unlawful for any person to sell or offer to sell in this state any beer unless the beer shall be sold or offered for sale in the original bottle or original package containing bottles, bearing the original label and the full name of the brewer or manufacturer thereof, both upon the label of the bottle and upon the cap or cork of the bottle. In the case of the sale of beer on draught, the beer shall be drawn from the original container or barrel, having stamped upon the ends thereof the full name of the manufacturer or brewer of the beer therein contained.

History. Acts 1933 (1st Ex. Sess.), No. 7, § 20; Pope's Dig., § 14212; A.S.A. 1947, § 48-521.

Cross References. Labeling of beer involved in fire, wreck, or other casualty, § 3-4-104.

3-5-221. Miscellaneous prohibited practices — Penalties.

(a)(1) Any person being either a retail dealer or who knowingly places in his or her stock, who brings upon his or her premises, who has in his or her possession, or who sells or offers for sale any beer or wine on which the tax provided by law has not been paid, in addition to the other fines, penalties, and forfeitures shall be subject to a penalty of twenty-five dollars (\$25.00) for each package of untaxed liquor so held or offered for sale.

(2) The penalty shall be in the nature of liquidated damages and may be collected by civil action.

(b) It shall be unlawful for any brewer or distributor of light wines or beer to manufacture or knowingly bring upon his or her premises and keep thereon any beer or wine of an alcoholic content in excess of five percent (5%) by weight or any distilled spirits of any alcoholic content whatsoever.

(c) Any person who shall add to or mix with any beer or wine as defined in this subchapter any alcoholic or any other liquid, any alcohol cube or cubes, or any other ingredient or ingredients that will increase or tend to increase the alcoholic content or who shall knowingly offer any such liquor for sale shall be guilty of a violation and shall be fined in any sum not less than one hundred dollars (\$100).

(d)(1) It shall be unlawful for a licensee or for any agent, servant, or employee of a licensee:

(A) To suffer or permit any dice to be thrown for money or for anything of value or to suffer or permit gambling with cards, dominoes, raffle, or other games of chance or any form of gambling in the place designated by the license or in any booth, room, yard, garden, or other place appurtenant thereto;

(B) To suffer or permit the licensed premises to become disorderly;

(C) To sell, barter, furnish, or give away to any minor under twenty-one (21) years of age any wine or beer;

(D) To sell, barter, furnish, or possess in the place designated by the license or in any booth, yard, or garden any alcoholic liquors or beverages containing in excess of five percent (5%) of alcohol by weight or to permit any such acts to be done;

(E) To permit any immoral or lascivious conduct on the part of the patrons or others at or in the licensed premises or in any place appurtenant thereto; or

(F) To suffer or permit the use of any profane, violent, abusive, or vulgar language at or in such licensed premises or in any place appurtenant thereto.

(2) The acts and conduct of the agents, servants, and employees of a licensee in the conduct of the business shall be deemed the acts and conduct of the licensee.

(3) Any violation of the provisions of this subsection shall constitute a Class A misdemeanor, and each day the offense shall be continued shall constitute a separate offense.

History. Acts 1933 (1st Ex. Sess.), No. 7, §§ 16, 19, 26; 1937, No. 261, § 1; Pope's Dig., §§ 14208, 14211, 14218; A.S.A. 1947, §§ 48-522 — 48-524; Acts 2005, No. 1994, § 31.

Amendments. The 2005 amendment

substituted "violation" for "misdemeanor" in (c); and substituted "Class A misdemeanor" for "misdemeanor and shall be punished by a fine of not more than five hundred dollars (\$500) and not more than one (1) year in jail" in (d)(3).

CASE NOTES

ANALYSIS

Minors.
Punishment.

Minors.

Prohibition against the sale of beer and wine to minors remains in full force and effect since this subchapter was not re-

pealed in its entirety by Alcoholic Control Act which exempts from its provisions malt and vinous beverages containing not more than 5% of alcohol. *Digiacoimo v. State*, 194 Ark. 24, 105 S.W.2d 78 (1937).

Punishment.

Failure of the court to assess any fine or imprisonment against defendant con-

victed by court of selling beer to a minor was error, since it is beyond the authority of a trial judge, upon a judgment of guilty, to refuse to assess any punishment. State

v. Lawrence, 246 Ark. 644, 439 S.W.2d 819 (1969).

Cited: Coburn v. Arkansas State ABC Bd., 278 Ark. 514, 647 S.W.2d 445 (1983).

3-5-222. Nudity on premises prohibited — Penalty — Regulations.

(a) No person that has received a permit under any law of the State of Arkansas for the sale or dispensing of alcoholic beverages for on-premises consumption shall suffer or permit any person to appear on the permitted premises in such manner or attire as to expose to view any portion of the pubic area, anus, vulva, or genitals or any simulation thereof, nor suffer or permit any female to appear on the premises in such manner or attire as to expose to view any portion of her breast below the top of the areola or any simulation thereof.

(b) Any retail beer permittee violating this section shall be guilty of a Class B misdemeanor.

(c) The Alcoholic Beverage Control Board shall promulgate such regulations as it deems necessary for the implementation of this section.

History. Acts 1985, No. 965, §§ 1, 2; A.S.A. 1947, §§ 48-956, 48-957; Acts 2005, No. 1994, § 373.

Publisher's Notes. Acts 1985, No. 965, §§ 1, 2, are also codified as § 3-9-101.

Amendments. The 2005 amendment substituted "guilty of a Class B misdemeanor" for "subject to the penalties prescribed in § 3-5-203" in (b).

3-5-223. Actions to recover taxes.

(a) Where the Director of the Department of Finance and Administration finds upon investigation that the state has lost tax on account of the evasion of any provision of law, he or she may bring suit in his or her own name in the proper court for the recovery of such taxes.

(b) Action shall lie against the person evading the tax and against any person who aided, abetted, or assisted in such evasion.

History. Acts 1933 (1st Ex. Sess.), No. 7, § 16; Pope's Dig., § 14208; A.S.A. 1947, § 48-522.

3-5-224. Disposition of funds.

All permits or license fees or taxes, penalties, fines, proceeds of all forfeitures, special inspection fees, and costs received by the Director of the Department of Finance and Administration under the provisions of this subchapter shall be general revenues and shall be deposited in the State Treasury to the credit of the State Apportionment Fund. The Treasurer of State shall allocate and transfer those revenues to the various State Treasury funds participating in general revenues in the respective proportions to each as provided by and to be used for the

respective purposes set forth in the Revenue Stabilization Law, § 19-5-101 et seq.

History. Acts 1933 (1st Ex. Sess.), No. § 1, as added by 1953, No. 118, § 36(F), as 7, § 6, as added by 1953, No. 118, § 32(F); added by 1971, No. 585, § 12; A.S.A. 1947, 1933 (1st Ex. Sess.), No. 7, § 16; Pope's §§ 48-504, 48-505, 48-522. Dig., §§ 14198, 14208; Acts 1957, No. 375,

3-5-225. Additional administrative personnel.

The Director of the Department of Finance and Administration and the Director of the Alcoholic Beverage Control Division are authorized to employ such additional clerks, inspectors, and assistants as may be necessary for the enforcement of this subchapter.

History. Acts 1933 (1st Ex. Sess.), No. 7, § 22; Pope's Dig., § 14214; A.S.A. 1947, § 48-506.

3-5-226. On-premises sales by brewery.

(a) The brewery may sell to the consumer at the brewery in lots of fewer than sixteen (16) gallons.

(b)(1) The Alcoholic Beverage Control Board is hereby authorized to promulgate reasonable rules and regulations for the on-premises sale with foods and the off-premises package sale, labeling, and identification of beer sold at beer outlets maintained on the premises and operated in connection with a brewery in this state.

(2) Such regulations shall include the following minimum requirements:

(A) The brewery shall provide tours through its facilities; and

(B) Only sealed containers may be removed from the brewery premises.

History. Acts 1999, No. 467, §§ 1, 2.

3-5-227. Registration of beer kegs for off-premises consumption.

(a) As used in this section:

(1) "Beer" means any fermented liquor made from malt or any substitute therefor and having an alcoholic content not in excess of five percent (5%) by weight;

(2) "Keg" means a vessel which has a liquid capacity of more than five gallons (5 gals.);

(3) "Malt beverage" means any liquor brewed from the fermented juices of grain and having an alcoholic content of no less than five percent (5%) nor more than twenty-one percent (21%) by weight; and

(4) "Off-premises" means a place other than the licensed retailer's place of business.

(b) All retail dealers that sell a keg of beer or malt beverage for off-premises consumption are required to attach an identification label

or tag approved by the Alcoholic Beverage Control Division to the keg prior to the sale.

(c)(1) The identification label or tag approved by the Alcoholic Beverage Control Division shall consist of paper within a clear protective coating made of plastic, metal, or another durable material that is not easily damaged or destroyed.

(2) The paper shall be of a kind to allow the required information to be copied and retained by the retail dealer.

(3) Identification labels used may contain a nonpermanent adhesive material in order to apply the label directly to an outside surface of a keg at the time of sale.

(4) Identification tags shall be attached to the kegs at the time of sale with nylon ties or cording, wire ties or other metal attachment devices, or another durable means of tying or attaching the tag to the keg.

(5) The identification label or tag shall be designed so that when affixed to a keg, the label or tag will not mar or otherwise physically damage the keg.

(6) The identification label or tag shall include:

(A) The name and address of the retail dealer;

(B) The name of the purchaser; and

(C) An individual identification number assigned by the retail dealer that uniquely identifies the keg.

(7) Each identification label or tag shall be perforated and of a composition that consistently allows for the full removal of the tag when common external keg cleaning procedures are performed at retail.

(d)(1) Prior to the retail sale of a keg of beer or malt beverage for off-premises consumption, the retail dealer shall require the purchaser to sign a statement promulgated by the Director of the Alcoholic Beverage Control Division attesting under the penalty of perjury:

(A) To the accuracy of the purchaser's name as shown on the identification label or tag; and

(B)(i) That the purchaser is aware that giving, procuring, or otherwise furnishing any alcoholic beverage to any person under twenty-one (21) years of age is a criminal offense as provided in §§ 3-3-201 and 3-3-202; and

(ii) That the purchaser will not allow any person under twenty-one (21) years of age to consume any of the beer or malt beverage in the keg.

(2) The retail dealer shall also record the following:

(A) The name and address of the purchaser;

(B) The identification card or driver's license number from the purchaser's acceptable documentation of age;

(C) The amount of the container deposit of not less than seventy-five dollars (\$75.00);

(D) The date and time of the purchase; and

(E) The keg identification number required under subsection (c) of this section.

(e)(1) All records and statements required under this section shall be maintained by the retail dealer for a period of ninety (90) days from the date of the return of the keg.

(2) The records and statements shall remain open to inspection by authorized agents of the Alcoholic Beverage Control Enforcement Division and law enforcement officers during the retail dealer's normal business hours.

(f)(1) The retail dealer shall notify the Director of the Alcoholic Beverage Control Enforcement Division on forms promulgated by the Alcoholic Beverage Control Division within ten (10) days of the forfeiture of a container deposit by a purchaser.

(2) The notification form shall consist of:

(A) The name and address of the retail dealer;

(B) The name and address of the purchaser;

(C) The retail dealer's beer permit or license number;

(D) A fee of twenty-five dollars (\$25.00) remitted to the Alcoholic Beverage Control Division; and

(E) A statement indicating the reason for forfeiture of the container deposit by the purchaser, including, but not limited to, the following reasons:

(i) The keg was not returned;

(ii) The keg was returned more than one hundred twenty (120) days after purchase;

(iii) The identification label or tag was removed; or

(iv) The identification label or tag was damaged.

(3) Any retail dealer that fails to notify the Director of the Alcoholic Beverage Control Enforcement Division within ten (10) days of the forfeiture of a container deposit by a purchaser is guilty of:

(A) A violation of this subchapter; and

(B) A Class B violation, as provided in § 3-4-402, against the retailer's permit.

(g)(1) No person other than the retail dealer, a licensed wholesaler, or an agent of the Alcoholic Beverage Control Enforcement Division may knowingly remove an identification label or tag placed on a keg.

(2) Any person other than the retail dealer, licensed wholesaler, or an agent of the Alcoholic Beverage Control Enforcement Division that is knowingly in possession of a keg without an identification label or tag or knowingly removes or damages an identification label or tag is guilty of a violation of this subchapter.

(h)(1) The Director of the Alcoholic Beverage Control Division may promulgate rules and prescribe forms for the proper enforcement of this section, including an approved identification label or tag for use under this section.

(2) The Alcoholic Beverage Control Division shall seek the input of licensed brewers and licensed beer importers in developing the label or tag.

History. Acts 2005, No. 2320, § 1; 2007, No. 254, § 1; 2007, No. 827, § 10.

A.C.R.C. Notes. Acts 2005, No. 1994 amended the penalty provisions of §§ 3-3-201 and 3-3-202 in such a manner that references to those provisions in subdivision (d)(1)(B)(i) of this section are no longer accurate.

Amendments. The 2007 amendment by No. 254 substituted “more than five gallons (5 gals.)” for “four gallons (4 gals.) or more” in (a)(2); inserted “approved by the Alcoholic Beverage Control Division” in (b) and (c)(1); in (c), substituted “copied and retained by the retail dealer” for “automatically produced in triplicate” in (c)(2), and inserted (c)(7); substituted “deposit of not less than seventy-five dollars (\$75.00)” for “deposit and registration” in (d)(2)(C); deleted former (f) and redesignated the following subdivisions accordingly; in present (f), substituted “container deposit” for “registration deposit” in (f)(1), (f)(2)(E), and (f)(3), deleted “and remit the Alcoholic Beverage Control Division’s portion of the registration deposit” preceding “on forms” and deleted “under subsection (f) of this section” at the end in (f)(1), substituted “A fee of twenty-five dollars (\$25.00)” for “The amount of the deposit being” in (f)(2)(D), and substituted “one hundred twenty (120)” for “ninety (90)” in (f)(2)(E)(ii); in present (h), inserted “including an approved identification label or tag for use under this section” in (h)(1), and rewrote (h)(2); and made related changes.

The 2007 amendment by No. 827 substituted “a criminal offense” for “a misdemeanor” in (d)(1)(B)(i).

SUBCHAPTER 3 — BEER — LICENSING OF RETAILERS

SECTION.

- 3-5-301. Subchapter cumulative.
- 3-5-302. Applications — Qualifications of applicant.
- 3-5-303. Applications — Misstatement or concealment of facts.

SECTION.

- 3-5-304. Applications — Notice requirements.
- 3-5-305. Applications — Protests.
- 3-5-306. Applications — Appeals.
- 3-5-307. Prohibited practices.

Publisher’s Notes. This subchapter contains provisions governing the licensing of retailers of beer. Subchapter 2 of this chapter contains provisions specifically regulating the sale of “beer” and “light wines” as defined therein to include only beer and wine with an alcoholic content not in excess of five percent (5%).

Cross References. Licenses and permits, removal of disqualification for criminal offenses, § 17-1-103.

Permits, on-premises consumption of beer, § 3-9-211.

Effective Dates. Acts 1943, No. 244, § 10: approved Mar. 18, 1943. Emergency clause provided: “Whereas the laws of the State of Arkansas regulating the conduct of businesses engaged in the sale of beer at retail are inadequate and it being necessary for the preservation of the public peace, health, and safety that the sale of beer at retail be regulated by the law enforcement officers of this state, an emergency is hereby declared to exist and this

bill shall be in full force and effect immediately from and after its passage.”

Acts 1991, No. 606, § 14: July 1, 1991. Emergency clause provided: “It is hereby found and determined that numerous persons who are resident aliens of the United States desire to operate establishments that dispense alcoholic beverages in the State of Arkansas and that the same are presently prohibited from obtaining a license in their name. It is further found and determined that the requirement of United States citizenship in order to maintain these establishments poses a burden upon commerce and restricts the number of persons who are able to contribute to the overall economy of the State of Arkansas. It is further found and determined that numerous national corporations are hindered in their operations in that they cannot have newly transferred managers or other key employees assume positions of responsibility within their local outlets since those persons do not meet

the two (2) year residency requirement and that such requirement poses an unreasonable burden on the conduct of business in this state as it relates to alcohol beverage outlets. It is further found that the present process of applying for or renewing ABC licenses by requiring proof of payment of personal property taxes is cumbersome, unnecessary, and has no direct relationship to the operation of the ABC permitted outlet. It is further found and determined that there are presently numerous conflicting requirements which are applied to applicants for various retail

licenses issued by the state ABC Division and that it is necessary and proper that such permit requirements be made uniform. That all of the aforementioned encumbrances are a burden on the transaction of commerce in the state and upon the efficient administration of government in the state. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect on and after July 1, 1991."

3-5-301. Subchapter cumulative.

This subchapter shall not be construed to repeal any other laws regulating the sale of beer, but shall be construed as cumulative thereto.

History. Acts 1943, No. 244, § 9; A.S.A. 1947, § 48-536.

3-5-302. Applications — Qualifications of applicant.

No license shall be issued to any person authorizing the sale of beer at retail unless the person shall file a verified application, accompanied by the fee required by law, and shall state in the application that he or she possesses the following qualifications:

(1) The applicant must be a person of good moral character, a citizen or resident alien of the United States, and a resident of the county in which the permit will be operated or reside within thirty-five (35) miles of the address of the premises described in the application;

(2) The applicant shall not have been convicted of a felony or have been convicted within five (5) years of the date of his or her application of any violation of the laws of this state or the laws of any other state relating to the sale of alcoholic beverages;

(3) The applicant shall not have had revoked, within five (5) years next-preceding his or her application, any license issued to him or her pursuant to the laws of this state or any other state to sell alcoholic liquor of any kind;

(4) The applicant shall be the owner of the premises for which the license is sought or the holder of an existing lease, buy-sell agreement, offer and acceptance, or option to lease thereon;

(5) If the applicant is a copartnership, all members of the partnership must be qualified to obtain a license;

(6)(A) If the applicant is a corporation, all officers and directors, any stockholder owning more than five percent (5%) of the stock of the corporation, and the person or persons who shall conduct and manage

the licensed premises for the corporation shall possess all the qualifications required herein for an individual license.

(B) The requirement as to residence in the United States or citizenship of the United States shall not apply to officers, directors, and stockholders of the corporation, but the requirement shall apply to any officer, director, or stockholder who is also the manager of the licensed premises in any capacity in the conduct or operation of the licensed premises.

History. Acts 1943, No. 244, § 1; 1967, No. 239, § 2; 1973, No. 189, § 2; A.S.A. 1947, § 48-528; Acts 1989, No. 295, § 1; 1991, No. 606, § 5; 1995, No. 536, § 1; 1999, No. 948, § 1.

Publisher's Notes. Subdivision (2) of this section may be superseded by § 17-1-103 which provides for the removal of an automatic disqualification for criminal convictions in obtaining permits and licenses for professions, trades, or occupations.

Acts 1991, No. 606, § 11, provided: "It is the intent of this law to no longer require citizenship of the United States in order for a person to hold certain ABC licenses and to eliminate the requirement that persons be a resident of the State of Arkansas for two (2) years prior to the time that they make application for an ABC license. It is also the intent of this law that

persons no longer be required to be registered voters in the county in which the permit is located and it is further intended that a person must either reside in the county where the premises is located or live within twenty-five (25) miles of the address of the permitted outlet. It is also the intent of this legislation that proof of payment of personal property taxes to the individual counties will no longer be required in order for a person to apply for or renew an ABC license. It is the further intent of this law that various application requirements regarding convicted felon status, status as it relates to violation of liquor laws of this state or any other state and revocation of permits shall be made uniform among various permits issued by the ABC Division. Therefore, any laws that may conflict with this act shall be and the same hereby are repealed."

3-5-303. Applications — Misstatement or concealment of facts.

Any misstatement or concealment of fact in the application shall be grounds for revocation of any license issued pursuant to the application.

History. Acts 1943, No. 244, § 1; 1973, No. 189, § 2; A.S.A. 1947, § 48-528.

vocations of licenses generally, §§ 3-2-212 — 3-2-217.

Cross References. Suspension or re-

3-5-304. Applications — Notice requirements.

(a)(1) After filing an acceptable application with the Director of the Alcoholic Beverage Control Division, the applicant shall cause to be published at least once a week for two (2) consecutive weeks in a legal newspaper of general circulation in the city in which the premises are situated or, if the premises are not in a city, in a newspaper of general circulation for the locality where the business is to be conducted, a notice that the applicant has applied for a permit to sell beer at retail.

(2) The notice shall be in such form as the director shall prescribe by rule, regulation, or order and shall be verified.

(3) The notice shall give the names of the applicant and the business and shall state that the applicant is a resident of Arkansas, that he or

she has a good moral character, that he or she has never been convicted of a felony or had a license to sell alcoholic beverages revoked within the five (5) years preceding the date of this notice, whether issued by this state or any other state, and that he or she has not been convicted of violating laws of this state or any other state governing the sale of alcoholic beverages within five (5) years preceding the date of this notice.

(b)(1) Within five (5) days after filing an application for a permit to sell beer at retail at any premises, a notice of the application shall be posted in a conspicuous place at the entrance to the premises.

(2) The applicant shall notify the director of the date when the notice is first posted.

(3) No permit shall be issued to any applicant until proper notice has been so posted on the premises for at least thirty (30) consecutive days.

(4) The notice shall be in such form as the director shall prescribe by rule, regulation, or order.

(c)(1) Upon receipt by the director of an application for a permit, written notice thereof, which shall include a copy of the application, shall immediately be mailed by the director to the sheriff, chief of police, if located within a city, and prosecuting attorney of the locality in which the premises are situated, and to the city board of directors or other governing body of the city in which the premises are situated, if within an incorporated area.

(2) No license shall be issued by the director until at least thirty (30) days have passed from the mailing by the director of the notices required by this section.

History. Acts 1943, No. 244, § 1; 1967, No. 239, § 2; 1973, No. 189, § 2; A.S.A. 1947, § 48-528; Acts 1989, No. 297, § 3; 1991, No. 606, § 6; 1995, No. 652, § 10.

Publisher's Notes. As to legislative intent of Acts 1991, No. 606, see note to § 3-5-302.

3-5-305. Applications — Protests.

Upon receipt by the Director of the Alcoholic Beverage Control Division within the thirty (30) days of a protest against issuance of a permit by a governing official of the city or county to whom the notice of an application for permit has been mailed, the director shall not issue the license until he or she has held a public hearing.

History. Acts 1943, No. 244, § 1; 1973, No. 189, § 2; 1981, No. 790, § 5; A.S.A. 1947, § 48-528.

3-5-306. Applications — Appeals.

(a) Any appeal from an order of the Director of the Alcoholic Beverage Control Division or the Alcoholic Beverage Control Board shall be made to the circuit court of the county in which the premises are situated or the Pulaski County Circuit Court.

(b) Appeals shall be governed by the terms of the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

History. Acts 1943, No. 244, § 1; 1973, No. 189, § 2; 1981, No. 790, § 5; A.S.A. 1947, § 48-528.

Cross References. On premises consumption permits, inapplicability of this section, § 3-9-211.

CASE NOTES

Sufficiency of Evidence.

Evidence was sufficient to support board's denial of permit based upon conclusion that adequate police protection

was not available to the premises due to its remoteness. *Copeland v. ABC Bd.*, 4 Ark. App. 143, 628 S.W.2d 588 (1982).

3-5-307. Prohibited practices.

No holder of a license authorizing the sale of beer for consumption on the premises where sold or any servant, agent, or employee of the licensee shall do any of the following upon the licensed premises:

- (1) Knowingly sell beer or wine to a minor;
- (2) Knowingly sell beer or wine to any person while the person is in an intoxicated condition;
- (3) Sell beer or wine upon the licensed premises or permit beer to be consumed thereon, on any day or at any time when the sale or consumption is prohibited by law;
- (4) Permit any prostitute to frequent the licensed premises;
- (5) Permit gambling or games of chance upon the licensed premises;
- (6) Permit on the licensed premises any disorderly conduct, breach of the peace, or any lewd, immoral, or improper entertainment, conduct, or practices;
- (7) Sell, offer for sale, or permit the sale on the licensed premises of any kind of alcoholic liquors, except wine and beer; or
- (8) Permit the consumption on the licensed premises of wine or any other kind of alcoholic liquor, except beer.

History. Acts 1943, No. 244, § 2; 1945, No. 119, § 1; A.S.A. 1947, § 48-529.

CASE NOTES

ANALYSIS

Sales to Intoxicated Persons.
Sales to Minors.

Sales to Intoxicated Persons.

Testimony by state police officers substantiated by intoximeter tests constituted substantial evidence that licensees violated this section and disciplinary action could be taken against the licensees even if the particular sales were made without their specific knowledge or con-

sent, since this section declares a violation where prohibited sales are made by any employee of the licensee. *Jarvis v. ABC Bd.*, 253 Ark. 724, 488 S.W.2d 709 (1973).

Sales to Minors.

Where there was evidence before the Alcoholic Beverage Control Board that holder of beer permit knowingly sold beer to minor, this evidence justified finding of the Alcoholic Beverage Control Board that license would be suspended for a period of time, regardless of whether sales were

made by holder of permit or by his agent.
 Morley v. Cassinelli, 216 Ark. 175, 224
 S.W.2d 828 (1949).

SUBCHAPTER 4 — NATIVE WINE GENERALLY

SECTION.

3-5-401 — 3-5-413. [Repealed.]

Effective Dates. Acts 2007, No. 668, § 6: Mar. 29, 2007. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that lawsuits are currently pending in both Federal Court for the Eastern District of Arkansas and Pulaski County Circuit Court regarding the constitutionality of the laws being amended by this subchapter; that the lawsuits are being defended by the office of the Arkansas Attorney General; and that immediate implementation of this act is necessary

because any delay may result in substantial costs to the state. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

3-5-401 — 3-5-413. [Repealed.]

Publisher's Notes. This subchapter, concerning native wine generally, was repealed by Acts 2007, No. 668, § 3. The subchapter was derived from the following sources:

3-5-401. Acts 1935, No. 69, § 1; Pope's Dig., § 14223; A.S.A. 1947, § 48-601.

3-5-402. Acts 1935, No. 69, § 2; Pope's Dig., § 14224; A.S.A. 1947, § 48-602; Acts 1987, No. 424, §§ 4, 5; 2003, No. 1445, § 1.

3-5-403. Acts 1935, No. 69, § 12; Pope's Dig., § 14234; A.S.A. 1947, § 48-612; Acts 2005, No. 1994, § 374.

3-5-404. Acts 1935, No. 69, § 11; Pope's Dig., § 14233; A.S.A. 1947, § 48-611.

3-5-405. Acts 1935, No. 69, § 3; Pope's Dig., § 14225; Acts 1981, No. 335, § 5; A.S.A. 1947, § 48-603; Acts 2003, No. 1445, § 2.

3-5-406. Acts 1935, No. 69, § 4; Pope's Dig., § 14226; A.S.A. 1947, § 48-604.

3-5-407. Acts 1935, No. 69, § 9; Pope's Dig., § 14231; A.S.A. 1947, § 48-609; Acts 1997, No. 1010, § 2; 1997, No. 1060, § 2.

3-5-408. Acts 1935, No. 69, § 5; Pope's Dig., § 14227; A.S.A. 1947, § 48-605.

3-5-409. Acts 1935, No. 69, § 8; Pope's Dig., § 14230; Acts 1985, No. 1052, § 1; A.S.A. 1947, § 48-608; Acts 1987, No. 424, § 6; 1991, No. 913, § 1.

3-5-410. Acts 1935, No. 69, § 6; Pope's Dig., § 14228; A.S.A. 1947, § 48-606.

3-5-411. Acts 1935, No. 69, § 7; Pope's Dig., § 14229; A.S.A. 1947, § 48-607; Acts 1987, No. 902, § 2; 1991, No. 1013, § 1; 2005, No. 1806, § 2.

3-5-412. Acts 1935, No. 69, § 10, as added by Acts 1953, No. 118, § 32(G); 1983, No. 906, § 1; 1985, No. 1052, § 2; A.S.A. 1947, §§ 48-608.1, 48-610.

3-5-413. Acts 1991, No. 953, §§ 1-3.

SUBCHAPTER 5 — NATIVE WINES — TRANSPORTATION

SECTION.

3-5-501 — 3-5-505. [Repealed.]

Effective Dates. Acts 2007, No. 668, § 6: Mar. 29, 2007. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that lawsuits are currently pending in both Federal Court for the Eastern District of Arkansas and Pulaski County Circuit Court regarding the constitutionality of the laws being amended by this subchapter; that the lawsuits are being defended by the office of the Arkansas Attorney General; and that immediate implementation of this act is necessary

because any delay may result in substantial costs to the state. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

3-5-501 — 3-5-505. [Repealed.]

Publisher's Notes. This subchapter, concerning transportation of native wines, was repealed by Acts 2007, No. 668, § 3. The subchapter was derived from the following sources:

3-5-501. Acts 1971, No. 441, § 5; A.S.A. 1947, § 48-632.

3-5-502. Acts 1971, No. 441, § 5; A.S.A.

1947, § 48-632; Acts 2005, No. 1994, § 375.

3-5-503. Acts 1971, No. 441, § 5; A.S.A. 1947, § 48-632.

3-5-504. Acts 1971, No. 441, § 5; A.S.A. 1947, § 48-632.

3-5-505. Acts 1971, No. 441, § 5; A.S.A. 1947, § 48-632.

SUBCHAPTER 6 — NATIVE WINES — PRODUCTION AND SALE

SECTION.

3-5-601. Legislative determinations and intent.

3-5-602. Rules and regulations.

3-5-603. Bottling — Tax.

3-5-604. Importing natural fruit flavors and herb flavors.

SECTION.

3-5-605. Importing fruits and vegetables.

3-5-606. Importing wines for blending.

3-5-607. [Repealed.]

Effective Dates. Acts 1975, No. 675, § 10: became law without Governor's signature, Mar. 31, 1975. Emergency clause provided: "It is hereby found and determined by the General Assembly that because of acute shortages of premium red grapes and other fruits, severe frost and hail damage to grapes for two years in succession, increasing sugar prices with reduction in the supply of available fer-

mentable sugars, and depressed economic conditions which have curtailed new vineyard plantings of needed varietal and generic grape types, that immediate steps must be taken to offer stimulus to the Arkansas native wine industry, thereby preserving a high level of production and employment by farmers in this State who produce fruits and grapes used by wineries, and that the immediate passage of

this act is necessary to accomplish this purpose. Therefore, an emergency is hereby declared to exist, and this act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after the date of its passage and approval."

Acts 1979, No. 770, § 3: Apr. 6, 1979. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that Acts 1975, No. 675 requires Arkansas wineries to file detailed reports with the Department of Finance and Administration with respect to the importation of natural fruit flavors and herb flavors, and the importation of fruits and vegetables for use in the production of native wine, and the importation of wines for blending with native wines, and that considerable expense could be saved by the department consolidating much of the report information into simplified forms, and with the detailed data to be preserved by the native wineries for departmental inspection and audit, and that the immediate passage of this act is necessary to accomplish such purposes and save funds by the State of Arkansas for other purposes. Therefore, an emer-

gency is hereby declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 2007, No. 668, § 6: Mar. 29, 2007. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that lawsuits are currently pending in both Federal Court for the Eastern District of Arkansas and Pulaski County Circuit Court regarding the constitutionality of the laws being amended by this subchapter; that the lawsuits are being defended by the office of the Arkansas Attorney General; and that immediate implementation of this act is necessary because any delay may result in substantial costs to the state. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

3-5-601. Legislative determinations and intent.

(a)(1) The General Assembly finds and determines that, due to extremely high prices of cane sugar and in view of the difficulty Arkansas wineries experience in obtaining dependable supplies of liquid corn sugar used as fermentation sugars in the production of native wines in this state and in view of the fact that many fruits such as apples, berries, peaches, and American varieties of grapes such as concord and niagara, which are easily produced in Arkansas, are low in sufficient sugar content in many growing seasons to produce sound, stable wine and because of resulting extremely low alcohol content, the addition of sugar is essential to production of quality-consistent, stable wines.

(2) It is essential that the regulations pertaining to the production of native wines in this state be modified to permit Arkansas wineries to use various other sources of sugar that have been approved for wine production under applicable federal regulations.

(b)(1) It is further determined by the General Assembly that in view of federal laws prohibiting the use of artificial flavoring in the production of natural wines it is essential for wineries to use natural fruit flavors and essences, that there is a lack of natural fruit flavor and

natural essence produced in Arkansas due to the climatic conditions of this state, for example, vermouth herbs, etc., commonly imported from Europe, and that the lack of natural fruit flavor and natural essence and herbs is causing a severe drop in the sale of Arkansas native wines.

(2) More and newer flavors of grape and apple wines are being produced, largely by wineries in the major wine-producing states and foreign countries, making it extremely difficult for Arkansas wineries to increase the exportation of native wine produced in this state into other states.

(3) It is in the interest of the fruit and vegetable growers in this state that Arkansas wineries be able to obtain the necessary natural fruit flavors and essences required to flavor and supplement Arkansas native wines produced in this state, thereby permitting Arkansas wineries to offer to the public a broader variety of native wines and, through increased wine production, experience an increasing demand for production of fruits and vegetables in this state which are used in the production of native wines, thereby resulting in gains in employment for the citizens of this state.

(c)(1) The General Assembly further determines that it was the purpose and intent of the Native Wine Law to promote the increased marketing and exportation of Arkansas fruits and vegetables in the form of wine and that it was not the intent of the Native Wine Law to curtail the expansion of Arkansas wineries by restricting the supply of raw materials when the supply of any particular raw material within the State of Arkansas is insufficient to sustain a properly aging quality-controlled wine product line.

(2) The General Assembly recognizes that acts of God — storms, hail, early spring frost, root bore disease, or other natural factors — or inadequate acreage of fruit needed to sustain the product line may cause an insufficiency in the supply of particular raw materials essential in the production of wine.

(3) The General Assembly further recognizes that many farmers in this state tend to overplant more frostproof varieties of grapes which produce heavy tonnages of grapes that, when converted into wine, result in overproduction of a particular type of wine, which is difficult to sell unless blended with other types of wines to make the same easily marketable.

(4) These factors and adverse circumstances, coupled with skyrocketing production costs and substantial increases in sugar prices, are causing a decline in the sale of Arkansas wines which may force wineries out of business, with a resulting loss of an established market for the sale of Arkansas grapes and other fruits and vegetables which are produced for sale to wineries.

(d)(1) The General Assembly is aware of the laws of other states having native wine laws which have adopted the federal laws and regulations as pertaining to the appellation of origin and the blending and proper labeling of wines, which allow a wine to carry the name of the state in which produced on its label as long as seventy-five percent

(75%) of the fruit or materials from which the wine is made is grown within the state designated on the label.

(2) Wineries in other states are thereby enjoying greater flexibility in overcoming weather damage which enables them to market and produce nationally with greater ease. The enactment of comparable provisions are essential to assure that Arkansas wineries and fruit and vegetable growers who sell and produce fruits and vegetables to be used in making wine have a fair competitive position with wineries of other states.

History. Acts 1975, No. 675, §§ 2, 4; A.S.A. 1947, §§ 48-634n, 48-635n. Law referred to in this section is codified as §§ 3-5-401 — 3-5-412 (repealed by Acts

Publisher's Notes. The Native Wine 2007, No. 688, § 3), and 3-5-803.

3-5-602. Rules and regulations.

(a) The Director of the Department of Finance and Administration is authorized to establish appropriate rules and regulations, if he or she deems it advisable, to simplify the furnishing of information to the Department of Finance and Administration as required under the provisions of this subchapter.

(b) The director may promulgate forms which are to be filed with the department abbreviating information now required to be furnished under this subchapter or may waive in writing the filing of any information with the department on condition that the information and records will be kept by Arkansas wineries for department inspection and audit.

History. Acts 1979, No. 770, § 1; A.S.A. 1947, § 48-633.1.

3-5-603. Bottling — Tax.

(a) In order to enable Arkansas wineries which produce native wines to sell their products to interstate and intrastate passenger airline companies and to passenger railroads in containers for their convenience and use, the Alcoholic Beverage Control Board is authorized to promulgate regulations to permit the bottling of wines produced by wineries in this state in two-fifths ($\frac{2}{5}$) pint or split size wine containers, or other nearest metric size practicable when the metric system of measurement is phased into operation in this country, for sale to airlines and passenger railroads for sale for consumption thereon.

(b) The regulations may also authorize the packaging of wines produced in two-fifths ($\frac{2}{5}$) pint or split size containers in the form of cluster sampler packages for sale in package form under such regulations as the board shall determine, for sale in this state or for export sale in other states.

(c) The Department of Finance and Administration is authorized to collect the necessary taxes in the same manner as now prescribed by law on the twentieth day of the month, on sales in Arkansas for the

month preceding, on wines bottled and packaged under subsections (a) and (b) of this section, which are sold in Arkansas.

History. Acts 1975, No. 675, § 1; A.S.A. 1947, § 48-633.

3-5-604. Importing natural fruit flavors and herb flavors.

(a) The Alcoholic Beverage Control Division and the Department of Finance and Administration are authorized to permit Arkansas wineries to bring into Arkansas natural fruit flavors and herb flavors which cannot be acquired in Arkansas and to use such flavors according to existing federal regulations regarding natural fruit flavors and formula approval for each blend of wine.

(b) The use of such natural fruit and herb flavors in the production of wines produced from fruits and vegetables grown in this state shall in no way deprive the Arkansas wineries of the benefits of the Native Wine Law with respect to the tax to be levied upon each gallon of native wine produced and sold in this state.

History. Acts 1975, No. 675, § 3; A.S.A. 1947, § 48-634.

Law referred to in this section is codified as §§ 3-5-401 — 3-5-412 (repealed by Acts

Publisher's Notes. The Native Wine 2007, No. 688, § 3), and 3-5-803.

3-5-605. Importing fruits and vegetables.

(a) Arkansas wineries are authorized to import into this state, in private or common carriers, fruits and vegetables grown outside the State of Arkansas in various forms so as to facilitate economic transportation and to use the fruits or vegetables in the production of wine according to applicable federal wine regulations, and labeled according to federal wine regulations.

(b) The importation of fruits and vegetables and the use thereof in wine production shall be in accordance with reasonable rules and regulations promulgated by the Department of Finance and Administration to assure compliance with this subchapter and prevent abuse thereof.

(c)(1) An Arkansas winery importing fruits or vegetables grown outside the State of Arkansas for use in making wines in this state shall pay the seventy-five cents (75¢) per gallon tax levied on imported wines or wines produced from fruits and vegetables not grown in this state or on wine made from such juices extracted from fruits or vegetables brought into the state if the wine is sold in Arkansas.

(2) The tax shall be paid in the same manner as prescribed by law on the twentieth day of the month on sales in Arkansas for the month preceding.

(3) Records at the Arkansas winery required by federal law shall be maintained to reflect the ratio of blend of Arkansas-grown wine and the amount of wine in the blend made from the fruits or vegetables grown outside the State of Arkansas.

(4) The seventy-five cents (75¢) per gallon tax shall be required to be paid only on the portion of the blend made from fruits or vegetables grown outside the State of Arkansas which are sold in Arkansas.

(5) The tax on the Arkansas-grown portion of the wine blend shall be the same as now required on wines produced from Arkansas-grown fruits and vegetables.

(d) Records of wine blends shall be preserved by the winery for a period of three (3) years from the relevant date of the record. These records shall be available on the premises at all times for the reasonable inspection by authorized agents of the Alcoholic Beverage Control Division and the department.

History. Acts 1975, No. 675, § 5; A.S.A. 1947, § 48-635.

wines and wines produced from fruits and vegetables not grown in Arkansas, § 3-7-

Cross References. Tax on imported 104.

3-5-606. Importing wines for blending.

(a)(1) Arkansas wineries are authorized to import into Arkansas finished or unfinished wines for blending with Arkansas red or white wines.

(2) The wines shall be shipped into this state and blended according to regulations as set forth in federal regulations and labeled according to federal regulations which require that the appellation of origin of "Arkansas Wines" can be used only on those wines which contain seventy-five percent (75%) Arkansas-grown grapes or other materials.

(b) The Arkansas winery shall pay a tax of seventy-five cents (75¢) per gallon on all wines imported into this state if the wines are sold in Arkansas. The seventy-five cents (75¢) per gallon tax shall be required to be paid only on the portion of the blend not grown and produced in Arkansas. The tax on the Arkansas-grown portion of the wine blend shall be the same as now required for wines produced from Arkansas-produced fruits and vegetables.

(c) The tax shall be paid in the same manner as prescribed on the twentieth day of the month of sale in Arkansas for the month preceding.

(d) The Arkansas winery shall keep records as required by federal law to show the ratio of blend of Arkansas-grown wines and the amount of out-of-state wines used in the blend.

(e) The Department of Finance and Administration shall establish appropriate rules and regulations for the reporting and collecting of the tax on imported wines used in such blends.

(f) To facilitate differentiation of taxes to the State of Arkansas on a wine blend under the provisions of this subchapter, a copy of the blend-ratio record which identifies the wine type or class shall accompany tax remittances for shipments made for sale in Arkansas for each particular blend.

(g) Records of the blends shall be preserved by a winery for a period of three (3) years from the relevant date of the record and shall be available on the premises at all times for reasonable inspection by authorized agents of the department.

(h) The Arkansas winery desiring to import wines into Arkansas to be used in blending with Arkansas wines as authorized in this subchapter shall make application for a permit to be issued by the Miscellaneous Tax Section of the Office of Excise Tax Administration of the Revenue Division of the Department of Finance and Administration, to import wines in the same manner presently required for brandy.

History. Acts 1975, No. 675, § 6; A.S.A. 1947, § 48-636.

Cross References. Native wine, gallonage tax, § 3-7-104.

3-5-607. [Repealed.]

Publisher's Notes. This section, concerning tax incentive for export of local wines, was repealed by Acts 2007, No. 668,

§ 5. The section was derived from Acts 1975, No. 675, § 7; A.S.A. 1947, § 48-637.

SUBCHAPTER 7 — WINE PRODUCERS COUNCIL

SECTION.

3-5-701. Creation — Members.
3-5-702. Officers.

SECTION.

3-5-703. Powers and duties.

3-5-701. Creation — Members.

(a)(1) There is created the Arkansas Wine Producers Council to be composed of seven (7) members.

(2) Four (4) members of the council shall be appointed by the Governor and confirmed by the Senate from a list of two (2) names submitted by the Arkansas Wine Producers Association for each of the four (4) positions to be filled.

(3) One (1) member shall be appointed by the Governor and confirmed by the Senate from a list of two (2) names submitted by the Arkansas State Horticulture Society.

(4) One (1) member of the council shall be designated by the Board of Trustees of the University of Arkansas and shall be a faculty member or administrator who is knowledgeable in viniculture.

(5) One (1) member shall be designated by the State Parks, Recreation, and Travel Commission, and the member shall be either a member or employee of the commission.

(b) All successor members shall be appointed or designated for terms of three (3) years.

History. Acts 1983, No. 912, § 1; A.S.A. 1947, § 48-649.

Publisher's Notes. The terms of the members of the Arkansas Wine Producers

Council are arranged so that three terms expire every three years and two terms expire in each of the two intervening years.

3-5-702. Officers.

At the first meeting of the Arkansas Wine Producers Council, it shall select from its membership a chairman and vice chairman and any

other officers it may deem necessary or appropriate to effectively carry out its responsibilities.

History. Acts 1983, No. 912, § 2; A.S.A. 1947, § 48-650.

3-5-703. Powers and duties.

(a) The Arkansas Wine Producers Council shall have the authority and responsibility to promote research concerning the production of wine grapes and the manufacture of wine in Arkansas and to take any other action it deems necessary or appropriate to promote and support the Arkansas native wine industry.

(b) The council shall have the exclusive authority to expend any and all funds deposited in the Arkansas Wine Producers Council Fund in the State Treasury for promoting research concerning the production of wine grapes and the manufacture of wine in Arkansas and for promoting the Arkansas native wine industry through the State Parks, Recreation, and Travel Commission.

(c) The council shall consider proposals for research projects submitted by university research institutions relating to the production of wine grapes and the manufacture of wine in Arkansas and proposals which promote the Arkansas native wine industry and tourism related to the industry submitted by the commission.

(d) Upon approval by a majority vote of the council of a proposal for research by a university research institution or for promotion or tourism by the commission, the council shall direct the Chief Fiscal Officer of the State to transfer on the Department of Finance and Administration books, and shall cause to be transferred on the books of the Treasurer of State and the Auditor of State, such amounts as determined by the council from the Arkansas Wine Producers Council Fund to the Department of Parks and Tourism Fund Account and to the operating fund or fund accounts of approved research institutions. Use of these funds may be applied as prescribed in this section in the various states of the United States and foreign countries.

History. Acts 1983, No. 912, § 3; A.S.A. 1947, § 48-651.

SUBCHAPTER 8 — NATIVE WINE INDUSTRY DISASTER RELIEF ACT

SECTION.

3-5-801. Title.

3-5-802. Legislative determinations and purpose.

3-5-803. Acquisition of ingredients from outside state.

3-5-804. Construction of act with existing laws.

SECTION.

3-5-805. Declaration of a relief program — Effect.

3-5-806. Expanding operations during period of program.

3-5-807. Tax on wines produced under program.

Effective Dates. Acts 1935, No. 69, § 15: Feb. 25, 1935. Emergency clause provided: "It is found as a fact that there are many farmers in this state engaged in the business of growing grapes, berries, and other fruits, and vegetables, and that if said products cannot be converted into wine and sold in this state, said farmers will suffer heavy losses and great damages during the year 1935 and for years to come; and it is further found as a fact that large numbers of aged and destitute citizens in the various counties of this state are in dire need of care and relief, and that the revenues provided for in this act are necessary to afford such care and relief. Now, therefore, an emergency hereby is declared to exist, and this act, being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 1981, No. 335, § 9: Mar. 5, 1981. Emergency clause provided: "It is hereby found and determined by the General As-

sembly that because of the acute shortage of grapes, fruits, berries, and/or vegetables due to diminishing cultivation of acreage in crops of grapes, fruits, berries, and vegetables used in the production of wine because of the severe drought, immediate steps must be taken to offer stimulus to the Arkansas native wine industry and thereby provide a high level of production and employment by native wineries in this state, and to stabilize the operation of such wineries during the periods of restoration of vineyards and orchards and other agricultural production facilities which serve the native wine industry, occasioned by severe natural disaster, and that the immediate passage of this act is necessary to accomplish such purposes. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

3-5-801. Title.

This subchapter and § 3-5-405 [repealed] shall be known as the "Native Wine Industry Disaster Relief Act".

History. Acts 1981, No. 335, § 1; A.S.A. 1947, § 48-642.

3-5-802. Legislative determinations and purpose.

(a) The General Assembly recognizes, by the passage of this subchapter and § 3-5-405 [repealed], the vital contribution of agriculture to the economy of this state and of the hundreds of acres of Arkansas farmlands and of the numerous Arkansas citizens devoted to, and employed in, the production of grapes, berries, fruits, and vegetables grown in this state which are purchased by Arkansas wineries for use in the production of native wine in Arkansas.

(b) The General Assembly further determines that the purpose and intent of the Native Wine Law is to promote the increased marketing and exportation of Arkansas fruits and vegetables in the form of wine and that it was not the intent of the Native Wine Law to curtail the expansion of Arkansas wineries by restricting the supplies of raw materials used in the production of wine when the supply of any particular raw material within the State of Arkansas is insufficient to sustain a properly aged quality-controlled wine product line.

(c) It is further recognized that periodically severe heat, drought, flood, plant disease, or other natural factors may cause significant loss in the production of grapes, berries, fruits, and vegetables grown in this state for sale to the native wineries.

(d) The General Assembly further recognizes, by the passage of this subchapter and § 3-5-405 [repealed], the vital contribution of the native wine industry to the economy of this state because it provides new employment opportunities, additional income, support for existing industries, and an expanding tax base in this state.

(e) Recognition is also given to statistical studies which indicate that investments in grape vineyards require commitments of resources for up to forty (40) years.

(f) It is the purpose of this subchapter and § 3-5-405 [repealed] to establish procedures whereby a native wine industry disaster relief program may be established when conditions created by severe flood, heat, drought, plant disease, or other natural cause may materially affect the production of grapes, fruits, berries, and vegetables used in producing native wine in this state in the future.

History. Acts 1981, No. 335, § 2; A.S.A. 1947, § 48-643.

Law referred to in this section is codified as §§ 3-5-401 — 3-5-412 (repealed by Acts 2007, No. 688, § 3), and 3-5-803.

Publisher's Notes. The Native Wine

3-5-803. Acquisition of ingredients from outside state.

Whenever reference is made in this subchapter and § 3-5-405 [repealed] to the acquisition of grapes, berries, fruits, or vegetables from sources outside this state to be used for the purposes and in the quantities authorized in this subchapter and § 3-5-405 [repealed], for the production of native wines, the term shall also be deemed to mean the acquisition of equivalent amounts thereof in the form of juice, pulp, or blendable wines to be used in the manufacture or blending of native wines in this state within the allowable percentages of such products used in the preparation of juices, pulp, or blendable wines as set forth in the order by the Director of the Department of Finance and Administration.

History. Acts 1935, No. 69, § 3; Pope's Dig., § 14225; Acts 1981, No. 335, § 5; A.S.A. 1947, § 48-603.

Publisher's Notes. Acts 1935, No. 69, § 3, as amended, was also codified as 3-5-405(b)(2) (now repealed).

3-5-804. Construction of act with existing laws.

(a) It is the intent of this subchapter and § 3-5-405 [repealed] that the provisions hereof shall be supplemental to the existing laws of this state pertaining to native wineries.

(b) It is also the intent of this subchapter and § 3-5-405 [repealed]:

(1) To provide for means of economic relief and stabilization of the native wine industry during periods of curtailed production of grapes, berries, fruits, and vegetables used in native wine production;

(2) To serve as an incentive for the restoration of vineyards, orchards, and other production facilities of products used by the native wine industry in this state; and

(3) To authorize the importation of products to offset losses of production of products in this state, only in accordance with a native wine industry disaster relief order of the Director of the Department of Finance and Administration.

(c) It is not the intent of this subchapter and § 3-5-405 [repealed] to modify or repeal the existing native wine laws of this state except to the extent that the laws may be in specific conflict herewith.

(d) Nothing in this subchapter and § 3-5-405 [repealed] shall be construed to require Arkansas wineries to pay gallonage tax in Arkansas on wines shipped and sold to wholesalers for sale outside of Arkansas.

(e) Nothing in this subchapter and § 3-5-405 [repealed] shall be construed to modify, amend, or repeal the laws of this state which require that the production of native wine shall be in accordance with applicable federal wine regulations with respect to the blending or labelling of wine.

History. Acts 1981, No. 335, §§ 7, 8;
A.S.A. 1947, §§ 48-647, 48-648.

3-5-805. Declaration of a relief program — Effect.

(a) Whenever, due to excessive heat, drought, flood, plant disease, or other natural disaster, the production of Arkansas-grown grapes, fruits, berries, or vegetables necessary to sustain the operation of native wineries on a full production basis is severely curtailed, upon petition therefor by one (1) or more native wineries licensed to do business in this state, and upon certification from the Agricultural Extension Service of the University of Arkansas that the production of such products has been curtailed due to natural disaster and outlining the estimated extent of the curtailment, the Director of the Department of Finance and Administration shall determine, within thirty (30) days, whether circumstances exist which justify the declaration of a native wine industry disaster relief program. In connection therewith, the director shall make independent studies and obtain information as he or she may deem appropriate or necessary to reach a proper decision in regard to the petition.

(b)(1) Upon conclusion of the studies, and in no event later than thirty (30) days after the date of the receipt of the petition, the director shall issue a ruling.

(2) If the director shall determine that circumstances justify the invoking of a native wine industry disaster relief program, as authorized in this subchapter and § 3-5-405 [repealed], he or she shall state in his order the facts which justify the establishment of the program, the anticipated loss in production of Arkansas-grown grapes, fruits, berries, or vegetables, or varieties thereof, to result from the natural

disaster, and the duration for which the native wine industry disaster relief program shall extend.

(3) Copies of the order shall be filed by the director with each licensed native winery in this state and with other interested parties who may request copies of the order.

(c) During the period of the native wine industry disaster relief program, as determined by the director, native wineries in this state may acquire from sources outside this state supplies of grapes, fruits, berries, or vegetables within the percentage of their total consumption of such products as set forth by the director.

History. Acts 1981, No. 335, § 4; A.S.A. 1947, § 48-645.

3-5-806. Expanding operations during period of program.

It shall be unlawful during the period of a native wine industry disaster relief order for any existing winery or any new winery in this state to start a branch or new production operation in this state during the period of the order for the sole purpose of abusing the intent of this subchapter and § 3-5-405 [repealed] to stabilize the production of native wine by authorizing the importation of products used in wine production to overcome production losses brought about by natural disasters.

History. Acts 1981, No. 335, § 7; A.S.A. 1947, § 48-647.

3-5-807. Tax on wines produced under program.

(a) During a period of native wine industry disaster relief order issued by the Director of the Department of Finance and Administration under the provisions of § 3-5-805, any native wine produced from grapes, berries, fruits, or vegetables within the permissible quantities authorized to be imported from sources of supply outside this state to replace losses in production of such products in this state resulting from natural disaster, within the percentages set forth in the native wine industry disaster relief order of the director, shall be subject to the native wine tax imposed under the provisions of § 3-5-409 [repealed]. The provisions of subchapter 6 of this chapter shall be inoperative with respect to wines produced from the grapes, fruits, berries, and vegetables imported from sources of supply outside this state within the quantities set forth in the order of the director.

(b) However, if quantities of wine are produced from the grapes, berries, fruits, and vegetables, or juices, pulp, or blendable wines thereof produced outside this state in excess of the percentage of the products authorized in the order of the director to offset losses of production in this state resulting from natural disaster, the tax on such excess native wine produced from imported grapes, fruits, berries, and

vegetables, or from juices, pulp, or blendable wines derived therefrom, shall be reported and paid as provided in subchapter 6 of this chapter.

History. Acts 1981, No. 335, § 6; A.S.A. 1947, § 48-646.

SUBCHAPTER 9 — NATIVE WINES — INCENTIVE GRANTS

SECTION.

- 3-5-901. Program established.
- 3-5-902. Purpose of incentives.
- 3-5-903. Rules and regulations.
- 3-5-904. Eligibility.
- 3-5-905. Applications.

SECTION.

- 3-5-906. Records.
- 3-5-907. Payments — Amount.
- 3-5-908. Arkansas Agricultural Marketing Grants Fund.

Publisher's Notes. The provisions of this subchapter may affect the provisions of § 3-5-1001 et seq.

Effective Dates. Acts 1985, No. 681, § 6: Mar. 27, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly that the wine industry in this state has provided a market for grapes, fruit, berries, and/or vegetables grown upon farms in Arkansas, and has thereby created employment opportunities and has encouraged the establishment and expansion of industries which support such agricultural activities; that natural disasters brought about by unseasonal climatic conditions during recent years resulted in droughts and below normal freezing conditions which have been destructive to vineyards and orchards used in the production of grapes, fruit, berries, and/or vegetables used in the wine industry; and that in order to provide stability to such industry and to provide continued markets for such agricultural products in this state, the General Assembly determines that grant payments, as provided in this act, are essential to stabilize the operation of win-

eries in this state; and that the immediate passage of this act is necessary to accomplish such purposes. Therefore, an emergency is hereby declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 2003 (1st Ex. Sess.), No. 50, § 116: July 1, 2003. Emergency clause provided: "It is found and determined by the General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 2003 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 2003 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 2003."

3-5-901. Program established.

As a means of providing more stable markets for grapes, fruits, berries, or vegetables used in the production of wine in this state, the General Assembly establishes a program of payments, in the form of grants, to be made to each winery in this state with respect to grapes,

fruits, berries, or vegetables grown and produced in Arkansas and used by wineries located in this state in the production of wine.

History. Acts 1985, No. 681, § 2; A.S.A. 1947, § 48-653.

3-5-902. Purpose of incentives.

Through the passage of this subchapter, the General Assembly establishes a financial incentive in the forms of grant payments as authorized in this subchapter for the encouragement of growing of grapes and other fruits used in the production of wine in this state to:

(1) Reduce unemployment and provide new and expanded job opportunities for the people of this state;

(2) Provide expanded markets for grapes, fruits, berries, or vegetables produced in Arkansas thereby providing increased opportunities for the use of productive lands in this state and to stimulate the agricultural economy of this state;

(3) Attract other industries to this state;

(4) Provide stability to the marketing of grapes used in the wine industries of this state thereby providing financial relief to the owners of hundreds of acres of vineyards that have been totally or severely damaged due to extreme drought and freezing conditions resulting from unseasonal weather and climatic changes that are not typical of the climate of this state;

(5) Provide relief to Arkansas wineries which must compete with products imported from foreign countries whose producers are receiving direct government subsidies which enable those producers to sell their products in this country at subsidized prices which gives them a competitive advantage over domestically produced wines, which is destructive of the domestic wine industry and agricultural and employment opportunities of persons who are dependent upon the wine industry for their support; and

(6) Provide relief to the financial community of this state which made investments and loans supporting the growers of grapes, fruits, berries, or vegetables used in the wine industry to provide stability to the marketing of such products thereby enabling the growers to overcome losses suffered due to extreme weather conditions, and as an incentive for additional investments necessary for increased production of such agricultural products in this state.

History. Acts 1985, No. 681, § 1; A.S.A. 1947, § 48-652.

3-5-903. Rules and regulations.

The Director of the Department of Finance and Administration may establish reasonable rules and regulations to be followed by wineries in this state in making application for the subsidy payments and to prevent abuse of the subsidy payments.

History. Acts 1985, No. 681, § 3; A.S.A. 1947, § 48-654.

3-5-904. Eligibility.

(a) Only those wineries actively involved in the sale of wine as an Arkansas-bonded winery for five (5) years or that have a federal license and are licensed by the State of Arkansas as of January 1, 2003, shall be eligible to receive grants under the provisions of this subchapter.

(b) Only those wineries located in this state which use not less than seventy-five percent (75%) of Arkansas-grown and Arkansas-produced grapes, fruits, berries, or vegetables for producing wine shall be eligible to receive grants under the provisions of this subchapter.

(c) However, in any year in which there are losses in production of Arkansas-grown grapes, fruits, berries, or vegetables used in the production of wine resulting from droughts, floods, tornadoes, extreme weather conditions, or other natural causes, the percentage of Arkansas-grown and Arkansas-produced grapes, fruits, berries, or vegetables used in producing wine, as required in this subchapter, shall be reduced in the proportion of the losses in production of the products as determined and set forth in a disaster relief order issued by the Director of the Department of Finance and Administration prepared under the same procedures as set forth in the Native Wine Industry Disaster Relief Act, §§ 3-5-405 [repealed] and 3-5-801 et seq.

History. Acts 1985, No. 681, § 2; A.S.A. 1947, § 48-653; Acts 2003 (1st Ex. Sess.), No. 50, § 110.

Amendments. The 2003 (1st Ex. Sess.) amendment added present (a) and redesignated former (a) and (b) as present (b) and (c); substituted "Arkansas-produced"

for "produced" in (b); and, in (c), substituted "floods" for "flood," "Arkansas-produced" for "produced," "the Native Wine Industry Disaster Relief Act, §§ 3-5-405 and 3-5-801 et seq." for "§§ 3-5-405 and 3-5-801 — 3-5-807" and made a minor stylistic change.

3-5-905. Applications.

Any winery in this state that produces wine from grapes, fruits, berries, or vegetables grown in this state and complies with the provisions of § 3-5-904, that desires to receive the grants authorized in this subchapter with respect to the purchase of such products or with respect to such products produced in vineyards or of other growing facilities in this state belonging to the winery, may make application for grant payments under this subchapter upon forms and in accordance with the rules and regulations promulgated by the Director of the Department of Finance and Administration.

History. Acts 1985, No. 681, § 2; A.S.A. 1947, § 48-653.

3-5-906. Records.

(a) Any winery seeking grant payments under the provisions of this subchapter shall keep records to establish the quantities of grapes, fruits, berries, or vegetables grown in this state purchased or produced by the winery and used in the making of wine.

(b) The records shall include weight receipts for grapes, fruits, berries, or vegetables used in wine-making, together with proof of purchase of the grapes, fruits, berries, or vegetables from Arkansas producers, or proof of production of the grapes, fruits, berries, or vegetables in production facilities belonging to the winery, a copy of which shall accompany a request for grant payments under this subchapter. Proof of purchase shall consist of a copy of a sales and weight receipt indicating the Arkansas grower's name and address from whom purchased or indicating the weight of the products produced from production facilities belonging to the winery. All weights shall be made upon scales inspected and certified by the Bureau of Standards of the State Plant Board.

History. Acts 1985, No. 681, § 2; A.S.A. 1947, § 48-653.

Publisher's Notes. Acts 1993, Nos. 610 and 624, § 1, provided: "The Arkansas Bureau of Standards, created by Act 482 of 1963, as amended, the same being

A.C.A. 4-18-201 et seq., and its functions, powers, duties, assets, properties, and appropriations are transferred by a type 2 transfer [see § 25-2-105] to the State Plant Board."

3-5-907. Payments — Amount.

(a) Grant payments as authorized in this subchapter shall be made by the Director of the Department of Finance and Administration from moneys appropriated by the General Assembly for that purpose at each biennial session of the General Assembly.

(b) Grant funds awarded shall be distributed equally to each winery at a base amount not to exceed twenty-five thousand dollars (\$25,000), with any remaining balance of the grant to be divided among each grantee according to the same ratio as the wine taxes paid in the previous calendar year by the grantee, as determined by the Chief Fiscal Officer of the State.

(c) Applications for grants shall be submitted to the Chief Fiscal Officer of the State on or by the 15th of June.

History. Acts 1985, No. 681, §§ 2, 3; A.S.A. 1947, §§ 48-653, 48-654; Acts 2003 (1st Ex. Sess.), No. 50, § 111.

Amendments. The 2003 (1st Ex. Sess.) amendment deleted former (b)-(d); and added present (b) and (c).

3-5-908. Arkansas Agricultural Marketing Grants Fund.

There is established on the books of the Treasurer of State, Auditor of State, and Chief Fiscal Officer of the State an Arkansas Agricultural Marketing Grants Fund, into which shall be paid such moneys as may

be provided by law to be used exclusively for making payments of grants to eligible Arkansas wineries.

History. Acts 1985, No. 681, § 3; A.S.A. 1947, § 48-654; Acts 2003 (1st Ex. Sess.), No. 50, § 112.

Amendments. The 2003 (1st Ex. Sess.) amendment deleted "with respect to the

purchase of grapes, fruits, berries, or vegetables produced in this state and purchased for use in this state for the production of wine" from the end of this section.

SUBCHAPTER 10 — NATIVE WINES — SUBSIDIES

SECTION.

3-5-1001. Legislative determinations and intent.

3-5-1002. Implementation dependent on federal legislation.

3-5-1003. Program to be established.

3-5-1004. Eligibility — Payment — Amount.

SECTION.

3-5-1005. Applications.

3-5-1006. Records.

3-5-1007. Establishment of Arkansas Wine Grape, Berry, Fruit, and Vegetable Subsidy Fund.

Publisher's Notes. The provisions of this subchapter may be affected by the provisions of § 3-5-901 et seq.

As of the date of publication of this code, no federal legislation of the nature described in this section had been enacted.

3-5-1001. Legislative determinations and intent.

(a) The General Assembly finds and recognizes that the tax incentives of the Native Wine Law of this state have provided incentives to encourage the expansion of the grape wine and other fruit wine industry in Arkansas, have caused the increase in the planting of grapes, berries, and other fruits, and have stimulated the construction, expansion, and operation of native wineries, with resulting benefits of employment, not only in the grape and berry production industry and in the wineries, but also in related industries which furnish cartons, bottles, petroleum products, fertilizer products, farm machinery and equipment, barrels, and related supplies and materials necessary and incidental to the wine industry.

(b) The stimulation of business activity in this state by the Native Wine Law, with resulting employment, is determined by the General Assembly to be essential to the economic welfare of this state.

(c) The General Assembly further notes that a number of states have enacted legislation similar to the Native Wine Law or other means of promoting the growth of fruits and vegetables used in the wine industry and that these laws in other states, as in Arkansas, have been enacted under guarantees of the Twenty-First Amendment to the Constitution of the United States that granted to states complete control over alcoholic beverages within and shipped into, their boundaries.

(d)(1) The General Assembly is further aware of proposed legislation presented in recent sessions of the Congress of the United States which, if passed, would not only destroy the tax incentive plans such as the Arkansas Native Wine Law, but will also directly and proportionately destroy those growers of wine grapes, fruits, and berries, and wineries within such states who acted in reliance and good faith upon the benefits of the tax incentive plan to make the initial investments to enter into the wine production business.

(2) The enactment of federal legislation prohibiting the continuation of tax incentive plans, such as the Native Wine Law, could not only be disastrous to the fruit and berry growers of this state and to the wineries which have invested funds in plants and equipment, but could also contribute to unemployment not only in these industries, but would substantially reduce the demands for goods and services which support the native fruit and berry production industry and the native winery industry, thereby creating a statewide economic decline.

(e) The General Assembly therefore determines that the enactment of this subchapter is essential to establish a special fruit wine industry-subsidy plan, to be implemented in the event federal legislation is enacted obviating the Native Wine Law, thereby protecting fruit and berry growers from economic collapse and further promoting the high level of employment in this state.

History. Acts 1975, No. 679, § 1; A.S.A. 1947, § 48-638n.

Publisher's Notes. The Native Wine

Law referred to in this section is codified as §§ 3-5-401 — 3-5-412 (repealed by Acts 2007, No. 688, § 3), and 3-5-803.

3-5-1002. Implementation dependent on federal legislation.

(a) The provisions of this subchapter shall be effective, and shall be implemented, only in the event the Congress of the United States enacts legislation obviating the Native Wine Law of this state and prohibits the State of Arkansas from granting to native wineries the incentives to purchase Arkansas-produced grapes, berries, fruits, or vegetables used in the production of native wine in this state.

(b) In the event of the enactment of federal legislation, the provisions of this subchapter shall become effective on the effective date of the federal legislation.

History. Acts 1975, No. 679, § 7; A.S.A. 1947, § 48-641n.

Publisher's Notes. As of the date of publication of this code, no federal legisla-

tion of the nature described in this section had been enacted.

For Native Wine Law, see Publisher's Notes, § 3-5-1001.

3-5-1003. Program to be established.

(a) In the event the Congress of the United States shall enact legislation which would prohibit the State of Arkansas from taxing wines produced in this state from grapes, berries, or other fruits or vegetables at a rate of tax less than the tax imposed on wines produced

in other states, thereby obviating the benefits of the Native Wine Law for Arkansas fruit and berry growers and native wineries, the General Assembly determines that wines produced by native wineries in this state from grapes, berries, and other fruits or vegetables grown in this state shall be taxed at the same rate of tax imposed upon wines produced from materials originating in another state.

(b) In the event of the passage of federal legislation obviating the Native Wine Law and as a means of providing continued inducement for the production of grapes, berries, fruits, and vegetables used in the production of wine in this state, a program of direct subsidies is established for the benefit of Arkansas growers of grapes, berries, fruits, and vegetables used in the production of wine in this state, which will become effective on the date which the federal legislation obviating the native wine tax becomes effective.

History. Acts 1975, No. 679, § 2; A.S.A. 1947, § 48-638.

Publisher's Notes. The effective date and implementation of this section is de-

pendent on federal legislation. See § 3-5-1002.

For Native Wine Law, see Publisher's Notes, § 3-5-1001.

3-5-1004. Eligibility — Payment — Amount.

(a) The subsidy to Arkansas growers of grapes, berries, fruits, or vegetables used in the production of wine in wineries in this state shall be in the form of payments made to each winery in this state with respect to all grapes, berries, fruits, or vegetables grown in this state which are bought by Arkansas wineries and used in the production of wine in this state.

(b) The subsidy shall not be available to wineries in this state with respect to grapes, berries, fruits, or vegetables produced outside the State of Arkansas.

(c) The winery paying the native wine tax shall be allowed to draw the subsidy within thirty (30) days after the wine tax is paid for the previous months' sales.

(d) The subsidy provided in this subchapter shall be computed at the rate of seven cents (7¢) per pound for Arkansas-produced grapes, berries, fruits, and vegetables purchased and used in the production of wine by wineries in this state. However, the aggregate amount of subsidy that any one (1) winery may receive under the provisions of this subchapter shall not exceed an amount in excess of the equivalent of sixty-nine cents (69¢) on each seventy-five cents (75¢) of tax levied in this state upon each gallon of wine sold in this state by the winery produced from Arkansas-grown fruits and vegetables upon which the tax is paid.

History. Acts 1975, No. 679, §§ 3, 4; A.S.A. 1947, §§ 48-639, 48-640.

Publisher's Notes. The effective date

and implementation of this section is dependent on federal legislation. See § 3-5-1002.

3-5-1005. Applications.

Any winery in this state which produces wines from grapes, berries, fruits, or vegetables grown in this state, which desires to receive the subsidy authorized in this subchapter with respect to such purchases, may make application for the subsidy with the Department of Finance and Administration upon forms and in accordance with rules and regulations promulgated by the Director of the Department of Finance and Administration.

History. Acts 1975, No. 679, § 4; A.S.A. 1947, § 48-640.

and implementation of this section is dependent on federal legislation. See § 3-5-

Publisher's Notes. The effective date

1002.

3-5-1006. Records.

(a) Each winery in this state shall keep records to establish the quantity of grapes, berries, fruits, or vegetables grown in this state which are purchased and used for the making of wine in this state.

(b) The records shall include weight receipts for fruits and vegetables, together with proof of purchase of the fruits and vegetables from Arkansas producers, a copy of which shall accompany requests for a tax subsidy payment. Proof of purchase shall consist of a copy of the sale weight receipt signed by the weighmaster, indicating the Arkansas grower's name and address from whom purchased. All weights shall be made upon scales inspected and certified by the Bureau of Standards of the State Plant Board.

(c) Wineries shall be allowed to submit weights from the past growing season, or for past years' growing seasons, preceding the sale of wine in order to allow for proper aging of the wine, with the exception of aged vintage year wines, in which case, a copy of the United States Bureau of Alcohol, Tobacco, and Firearms and Explosives vintage control production form shall accompany the copy of the weight ticket for the year the vintage was harvested, following federal restrictions on fractional blend allowances.

History. Acts 1975, No. 679, § 4; A.S.A. 1947, § 48-640.

Publisher's Notes. The effective date and implementation of this section is dependent on federal legislation. See § 3-5-1002.

Acts 1993, Nos. 610 and 624, § 1,

provided: "The Arkansas Bureau of Standards, created by Act 482 of 1963, as amended, the same being A.C.A. 4-18-201 et seq., and its functions, powers, duties, assets, properties, and appropriations are transferred by a type 2 transfer [see § 25-2-105] to the State Plant Board."

3-5-1007. Establishment of Arkansas Wine Grape, Berry, Fruit, and Vegetable Subsidy Fund.

(a) In order to provide moneys to be used in paying the subsidies to Arkansas grape, berry, fruit, and vegetable producers whose production is sold to wineries in this state for making wine, the Director of the Department of Finance and Administration is authorized and directed

to cause to be set aside in the State Treasury an amount of sixty-nine cents (69¢) for each seventy-five cents (75¢) gallonage tax collected on wines produced by wineries in this state from grapes, berries, fruits, or vegetables used in the production of wines in this state.

(b) The amounts to be set aside shall be certified to the Treasurer of State during each period of settlement with the Treasurer of State on wine gallonage taxes collected from wineries in this state. The funds shall be deposited in a fund within the State Treasury to be known as the "Arkansas Wine Grape, Berry, Fruit, and Vegetable Subsidy Fund". The fund shall be used exclusively for payment of subsidies to Arkansas wineries with respect to purchases of grapes, berries, fruits, and vegetables produced in this state used in the production of wine in this state.

History. Acts 1975, No. 679, § 5; A.S.A. 1947, § 48-641.

Publisher's Notes. The effective date

and implementation of this section is dependent on federal legislation. See § 3-5-1002.

SUBCHAPTER 11 — BEER — WHOLESALERS AND SUPPLIERS

SECTION.

- 3-5-1101. Legislative intent and purpose.
- 3-5-1102. Definitions.
- 3-5-1103. Applicability of subchapter to future agreements — Transferee continues under agreement.
- 3-5-1104. Subchapter cumulative.
- 3-5-1105. Waiver of rights.
- 3-5-1106. Civil action for violations — Damages — Venue.

SECTION.

- 3-5-1107. Prohibited acts by supplier.
- 3-5-1108. Compensation upon supplier's violation — Arbitration.
- 3-5-1109. Prohibited acts by wholesaler.
- 3-5-1110. Transfer of wholesaler's business — Interference prohibited.
- 3-5-1111. Conditions for modification of agreement.

A.C.R.C. Notes. Acts 1991, Nos. 8 and 866, § 15, provided: "All laws or parts of laws which conflict with this Act or which are inconsistent with this Act as it relates to beer wholesalers are hereby repealed."

Effective Dates. Acts 1991, Nos. 8 and 866, § 16: Jan. 31, 1991 and Mar. 29, 1991, respectively. Emergency clause provided: "It is hereby found and determined by the General Assembly that present law does not adequately protect wholesalers of

beer and light wine from arbitrary actions of suppliers; that this Act provides such protection; and that until this Act goes into effect the Arkansas wholesalers will be susceptible to arbitrary actions of the suppliers. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

RESEARCH REFERENCES

Am. Jur. 45 Am. Jur. 2d, Intox. L., §§ 123, 125, 127, 137, 245.

C.J.S. 48 C.J.S., Int. Liq., §§ 41 et seq., 101, 226.

3-5-1101. Legislative intent and purpose.

(a) The legislative intent and purpose of this subchapter is to provide a structure for the business relations between a wholesaler and a supplier of beer.

(b) Regulation in this area is considered necessary for the following reasons:

(1) To maintain stability and healthy competition in the beer industry in this state;

(2) To promote and maintain a sound, stable, and viable three-tier system of distribution of beer to the public; and

(3) To promote the public health, safety, and welfare.

History. Acts 1991, No. 8, § 1; 1991, No. 866, § 1.

3-5-1102. Definitions.

(a) The following words or phrases, or the plural thereof, whenever they appear in this subchapter shall have, unless the context clearly requires otherwise, the meanings ascribed to them in this section:

(1) “Agreement” means any agreement between a wholesaler and a supplier, whether oral or written, whereby a wholesaler is granted the right to purchase and sell a brand or brands of beer sold by a supplier;

(2) “Ancillary business” means:

(A) A business owned by the wholesaler, by a substantial stockholder of a wholesaler, or by a substantial partner of a wholesaler the primary business of which is directly related to the transporting, storing, or marketing of the brand or brands of beer of a supplier with whom the wholesaler has an agreement; or

(B) A business owned by a wholesaler, a substantial stockholder of a wholesaler, or a substantial partner of a wholesaler which recycles empty beverage containers of the supplier;

(3) “Designated member” means and includes:

(A) The spouse, child, grandchild, parent, brother, or sister of a deceased individual who owned an interest, including a controlling interest, in a wholesaler;

(B) Any person who inherits under the deceased individual’s will or under the laws of intestate succession of this state;

(C) Any person or entity which has through a valid testamentary device by the deceased individual succeeded the deceased individual’s ownership interest in the wholesaler pursuant to a written contract or instrument which has been previously approved by a supplier;

(D) The appointed and qualified personal representative and the testamentary trustee of a deceased individual owning an ownership interest in a wholesaler; and

(E) The person appointed by a court as the guardian or conservator of the property of an incapacitated individual owning an ownership interest in a wholesaler;

(4) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade, as defined in and interpreted under the Uniform Commercial Code, § 4-1-201;

(5) "Reasonable qualifications" means the standard of the reasonable criteria established and consistently used by the respective supplier for similarly situated wholesalers that entered into, continued, or renewed an agreement with the supplier during a period of twenty-four (24) months prior to the proposed transfer of the wholesaler's business, or for similarly situated wholesalers who have changed managers or designated managers during a period of twenty-four (24) months prior to the proposed change in the manager or successor manager of the wholesaler's business;

(6) "Retaliatory action" means the refusal to continue an agreement, or a material reduction in the quality of service or quantity of products available to a wholesaler under an agreement, which refusal or reduction is not made in good faith;

(7) "Sales territory" means an area of exclusive sales responsibility for the brand or brands of beer sold by a supplier as designated by an agreement;

(8) "Substantial stockholder or substantial partner" means a stockholder of or partner in the wholesaler who owns an interest of ten percent (10%) or more of the partnership or of the capital stock of a corporate wholesaler;

(9) "Director" means the Director of the Alcoholic Beverage Control Division;

(10) "Supplier" means a manufacturer or importer of beer and light wine brands as registered with the director;

(11) "Transfer of wholesaler's business" means the voluntary sale, assignment, or other transfer of ten percent (10%) or more or control of the business or all or substantially all of the assets of the wholesaler, or ten percent (10%) or more or control of the capital stock of the wholesaler, including, without limitation, the sale or other transfer of capital stock or assets by merger, consolidation, or dissolution, or of the capital stock of the parent corporation, or of the capital stock or beneficial ownership of any other entity owning or controlling the wholesaler;

(12) "Wholesaler" means a wholesaler of beer and light wine as licensed by the Alcoholic Beverage Control Board and as defined in § 3-5-202(10);

(13) "Similarly situated wholesalers" means wholesalers of a supplier that are of a generally comparable size, and operate in markets with similar demographic characteristics, including population size, density, distribution, and vital statistics, as well as reasonably similar economic and geographic conditions;

(14) "Beer" includes light wine and shall carry the same definitions as set forth in § 3-5-202(3) and (4).

(b) Other words and phrases used in this subchapter shall have the meanings ascribed to them in §§ 3-1-102 and 3-5-202, as amended, and

any acts amendatory thereof, supplementary thereto, or substituted therefor unless the context clearly requires otherwise.

History. Acts 1991, No. 8, § 2; 1991, No. 866, § 2.

3-5-1103. Applicability of subchapter to future agreements — Transferee continues under agreement.

(a) This subchapter shall apply to agreements entered into or renewed after January 31, 1991.

(b)(1) A transferee of a wholesaler that continues in business as a wholesaler shall have the benefit of and be bound by all terms and conditions of the agreement with the supplier in effect on the date of the transfer.

(2) However, a transfer of a wholesaler's business which requires the supplier's consent or approval but is disapproved by the supplier shall be null and void.

History. Acts 1991, No. 8, § 9; 1991, No. 866, § 9.

3-5-1104. Subchapter cumulative.

This subchapter is cumulative and supplements and is in addition to Title 3 of this code and § 4-72-201 et seq., as amended.

History. Acts 1991, No. 8, § 12; 1991, No. 866, § 12.

3-5-1105. Waiver of rights.

(a)(1) A wholesaler may not waive any of the rights granted in any provision of this subchapter, and the provisions of any agreement which would have such an effect shall be null and void.

(2) Nothing in this subchapter shall be construed to limit or prohibit good faith dispute settlements voluntarily entered into by the parties.

(b) No right or cause of action authorized by Arkansas law shall be waived by the supplier or wholesaler unless specifically waived in the agreement.

History. Acts 1991, No. 8, §§ 8, 11; 1991, No. 866, §§ 8, 11.

3-5-1106. Civil action for violations — Damages — Venue.

(a) If a supplier or wholesaler engages in conduct prohibited under this subchapter, a wholesaler with which the supplier has an agreement may maintain a civil action against the supplier to recover actual damages reasonably incurred as the result of the prohibited conduct.

(b) A supplier or wholesaler that violates any provision of this subchapter shall be liable for all actual damages and all court costs and,

in the court's discretion, reasonable attorney's fees incurred by a wholesaler as a result of that violation.

(c) A supplier or wholesaler may bring an action for declaratory judgment for determination of any controversy arising pursuant to this subchapter.

(d) Upon proper application to the court, a supplier or wholesaler may obtain injunctive relief against any violation of this subchapter.

(e) Any legal action taken under this subchapter or in a dispute over the provisions of an agreement, shall be filed in a court, state or federal, located in Arkansas, which state court is located in or which federal court has jurisdiction and venue of the county in which the wholesaler maintains its principal place of business in this state.

History. Acts 1991, No. 8, § 10; 1991, No. 866, § 10.

3-5-1107. Prohibited acts by supplier.

A supplier shall not do the following:

(1) Fail to provide to each wholesaler of the supplier's brand or brands with a written agreement which contains, in total, the supplier's agreement with each wholesaler and designates a specific exclusive sales territory. Any agreement which is in existence on January 31, 1991, shall be renewed consistent with this subchapter, provided that this subchapter may be incorporated by reference in the agreement. Provided, however, nothing contained herein shall prevent a supplier from appointing, one (1) time for a period not to exceed ninety (90) days, a wholesaler to temporarily service a sales territory not designated to another wholesaler, until such time as a wholesaler is appointed by the supplier; and such wholesaler who is designated to service the sales territory during this period of temporary service shall not be in violation of this subchapter, and, with respect to the temporary service territory, shall not have any of the rights provided under §§ 3-5-1108 and 3-5-1111;

(2) Fix, maintain, or establish the price at which a wholesaler shall sell any beer;

(3) Enter into an additional agreement with any other wholesaler for, or to sell to any other wholesaler, the same brand or brands of beer in the same territory or any portion thereof, or to sell directly to any retailer in this state;

(4) Require any wholesaler to accept delivery of any beer or other commodity which has not been ordered by the wholesaler. Provided, however, a supplier may impose reasonable inventory requirements upon a wholesaler if the requirements are made in good faith and are generally applied to other similarly situated wholesalers who have an agreement with the supplier;

(5) Require any wholesaler to accept delivery of any beer or other commodity ordered by a wholesaler if the order was properly cancelled by the wholesaler in accordance with the supplier's procedures;

(6) Require any wholesaler to do any illegal act or to violate any law or regulation by threatening to amend, modify, cancel, terminate, or refuse to renew any agreement existing between the supplier and wholesaler;

(7) Require a wholesaler to assent to any condition, stipulation, or provision limiting the wholesaler's right to sell the brand or brands of beer of any other supplier unless the acquisition of the brand or brands of another supplier would materially impair or adversely affect the wholesaler's quality of service, sales, or ability to compete effectively in representing the brand or brands of the supplier presently being sold by the wholesaler; provided the supplier shall have the burden of proving that such acquisition of such other brand or brands would have such effect;

(8) Require a wholesaler to purchase one (1) or more brands of beer products in order for the wholesaler to purchase another brand or brands of beer for any reason. Provided, however, a wholesaler that has agreed to distribute a brand or brands before January 31, 1991, shall continue to distribute the brand or brands in conformance with this subchapter;

(9) Require a wholesaler to submit audited profit and loss statements, balance sheets, or financial records as a condition of renewal or continuation of an agreement;

(10) Withhold delivery of beer ordered by a wholesaler, or change a wholesaler's quota of a brand or brands if the withholding or change is not made in good faith;

(11) Require a wholesaler by any means directly to participate in or contribute to any local or national advertising fund controlled directly or indirectly by a supplier;

(12) Take any retaliatory action against a wholesaler that files a complaint in good faith regarding an alleged violation by the supplier of federal, state, or local law or an administrative rule as a result of that complaint;

(13) Require or prohibit any change in the manager or successor of any wholesaler who has been approved by the supplier as of or subsequent to January 31, 1991, unless the supplier acts in good faith. Should a wholesaler change an approved manager or successor manager, a supplier shall not require or prohibit the change unless the person selected by the wholesaler fails to meet the nondiscriminatory, material, and reasonable standards and qualifications for managers consistently applied to similarly situated wholesalers by the supplier. Provided, however, the supplier shall have the burden of proving that such person fails to meet such standards and qualifications;

(14) Upon written notice of intent to transfer the wholesaler's business, interfere with, prevent, or unreasonably delay, not to exceed thirty (30) days, the transfer of the wholesaler's business if the proposed transferee is a designated member;

(15) Upon written notice of intent to transfer the wholesaler's business other than to a designated member, withhold consent to or

approval of, or unreasonably delay, not to exceed thirty (30) days after receipt of all material information reasonably requested, a response to a request by the wholesaler for any transfer of a wholesaler's business if the proposed transferee meets the nondiscriminatory, material, and reasonable qualifications and standards required by the supplier for similarly situated wholesalers; or

(16) Restrict or inhibit the right of free association among wholesalers for any lawful purpose.

History. Acts 1991, No. 8, § 3; 1991, No. 866, § 3.

3-5-1108. Compensation upon supplier's violation — Arbitration.

(a) Except as provided for in this subchapter, a supplier that has amended, modified, cancelled, terminated, or refused to renew any agreement; or caused a wholesaler to resign from an agreement; or has interfered with, prevented, or unreasonably delayed, or, where required by this subchapter, has withheld or unreasonably delayed consent to or approval of, any assignment or transfer of a wholesaler's business, shall pay the wholesaler reasonable compensation for the diminished value of the wholesaler's business including any ancillary business which has been negatively affected by the act of the supplier. The value of the wholesaler's business or ancillary business shall include, but not be limited to, its good will. Provided, however, nothing contained in this subchapter shall give rise to a claim against the supplier or wholesaler by any proposed purchaser of a wholesaler's business.

(b)(1)(A) Should either party, at any time, determine that mutual agreement on the amount of reasonable compensation cannot be reached, the supplier or the wholesaler may send by certified mail, return receipt requested, written notice to the other party declaring its intention to proceed with arbitration.

(B) Arbitration shall proceed only by mutual agreement of both parties.

(2)(A) Not more than ten (10) business days after the notice to enter into arbitration has been delivered, the other party shall send written notice to the requesting party declaring its intention either to proceed or not to proceed with arbitration.

(B) Should the other party fail to respond within ten (10) business days, it shall be conclusively presumed that said party shall have agreed to arbitration.

(3) The matter of determining the amount of compensation may, by agreement of the parties, be submitted to a three-member arbitration panel consisting of one (1) representative selected by the supplier but unassociated with the affected supplier, one (1) wholesaler representative selected by the wholesaler but unassociated with the wholesaler; and an impartial arbitrator.

(4)(A)(i) Not more than ten (10) business days after mutual agreement of both parties has been reached to arbitrate, each party shall designate, in writing, its one (1) arbitrator representative, and the party initiating arbitration shall request, in writing, a list of five (5) arbitrators from the American Arbitration Association or its successor and request that the list be mailed to each party by certified mail, return receipt requested.

(ii) Not more than ten (10) business days after the receipt of the list of five (5) choices, the wholesaler arbitrator and the supplier arbitrator shall strike and disqualify up to two (2) names each from the list.

(B) Should either party fail to respond within the ten (10) business days or should more than one (1) name remain after the strikes, the American Arbitration Association shall make the selection of the impartial arbitrator from the names not stricken from the list.

(5)(A) Not more than thirty (30) days after the final selection of the arbitration panel is made, the arbitration panel shall convene to decide the dispute.

(B) The panel shall conclude the arbitration within twenty (20) days after the arbitration panel convenes and shall render a decision by majority vote of the arbitrators within twenty (20) days from the conclusion of the arbitration.

(C) The award of the arbitration panel shall be final and binding on the parties as to the amount of compensation for the diminished value.

(6) The cost of the impartial arbitrator, the stenographer, and the meeting site shall be equally divided between the wholesaler and the supplier. All other costs shall be paid by the party incurring them.

(7)(A)(i) After both parties have agreed to arbitrate, should either party, except by mutual agreement, fail to abide by the time limitations as prescribed in subdivisions (b)(2), (4), and (5) of this section, or fail or refuse to make the selection of any arbitrators, or fail to participate in the arbitration hearings, the other party shall make the selection of its arbitrators and proceed to arbitration.

(ii) The party who has failed or refused to comply as prescribed in this section shall be considered to be in default.

(B) Any party considered to be in default pursuant to this subsection shall have waived any and all rights the party would have had in the arbitration and shall be considered to have consented to the determination of the arbitration panel.

CASE NOTES

ANALYSIS

Applicability.
Transfer.

Applicability.

Distributor's claim under the Arkansas Franchise Practices Act, § 4-72-201 et seq., was not a claim against the company by a proposed purchaser of a wholesaler's business but, rather, by its own franchisee; the company's alleged interference with the potential purchase of another franchise was merely evidence used to support the distributor's claim and, thus, the distributor's claim was not preempted by this section. *Miller Brewing Co. v. Ed*

Roleson, Jr., Inc., 365 Ark. 38, — S.W.3d — (2006).

Transfer.

Brewing company's obligation under the Arkansas Beer Wholesaler's Act (Act), § 3-5-1101 et seq., to approve a transfer of the wholesaler's business was conditioned upon the distributor's submitting written notice of intent to transfer; without this written notice, the company had no duty under the Act to approve a transfer and, because the distributor provided no written notice, it had no claim against the company for failure to approve a transfer. *Southeastern Distrib. Co. v. Miller Brewing Co.*, 366 Ark. 560, 223 S.W.3d 806 (2006).

3-5-1109. Prohibited acts by wholesaler.

A wholesaler shall not do any of the following:

(1) Fail to devote such efforts and resources to the sale and distribution of all the supplier's brands of beer which the wholesaler has been granted the right to sell or distribute as are required in the wholesaler's agreement with the supplier;

(2)(A) Sell or deliver beer to a retail licensee located outside the sales territory designated to the wholesaler by the supplier of a particular brand or brands of beer.

(B)(i) Provided, however, during periods of temporary service interruptions impacting a particular sales territory, a supplier may appoint another wholesaler to service the sales territory during the period of temporary service interruption.

(ii) A wholesaler who is designated to service the impacted sales territory during the period of temporary service interruption shall not be in violation of this subchapter and shall not have any of the rights provided under §§ 3-5-1108 and 3-5-1111 with respect to the temporary service territory.

(3)(A) Transfer the wholesaler's business without giving the supplier written notice of intent to transfer the wholesaler's business and, where required by this subchapter, receiving the supplier's approval for the proposed transfer.

(B) Provided, consent or approval of the supplier shall not be required of any transfer of the wholesaler's business to a designated member, or of any transfer of less than ten percent (10%) of the wholesaler's business unless such transfer results in a change in control.

(C) Provided, however, that the wholesaler shall give the supplier written notice of any change in ownership of the wholesaler.

History. Acts 1991, No. 8, § 4; 1991, No. 866, § 4.

3-5-1110. Transfer of wholesaler's business — Interference prohibited.

(a)(1)(A) Upon written notice of intent to transfer the wholesaler's business, any individual owning or deceased individual who owned an interest in a wholesaler may transfer the wholesaler's business to a designated member or to any other person who meets the nondiscriminatory, material, and reasonable qualifications and standards required by the supplier for similarly situated wholesalers.

(B) The consent or approval of the supplier shall not be required of any transfer of the wholesaler's business, including the assignment of the wholesaler's rights under the agreement, to a designated member shall not be withheld or unreasonably delayed to a proposed transferee who meets such nondiscriminatory, material, and reasonable qualifications and standards.

(2) Provided, such designated member or transferee shall in no event be qualified as a transferee without the written approval or consent of the supplier where such proposed transferee shall have been involved in any of the following:

(A) Insolvency, filing of any voluntary or involuntary petition under any bankruptcy or receivership law, or execution of an assignment for the benefit of creditors; or

(B) Revocation or suspension of an alcoholic beverage license by the regulatory agency of the United States Government or any state, whereby service was interrupted for more than thirty-one (31) days; or

(C) Conviction of the proposed transferee or any owner thereof of a felony under the United States Code or the laws of any state which reasonably may adversely affect the good will or interest of the wholesaler or supplier; or

(D) Had an agreement involuntarily terminated, cancelled, not renewed, or discontinued by a supplier for good cause.

(b) The supplier shall not interfere with, prevent, or unreasonably delay the transfer of the wholesaler's business, including an assignment of wholesaler's rights under the agreement, if the proposed transferee is a designated member or if the transferee other than a designated member meets such nondiscriminatory, material and reasonable qualifications and standards required by the supplier for similarly situated wholesalers. Where the transferee is other than a designated member, the supplier may in good faith and for good cause related to the reasonable qualifications refuse to accept the transfer of the wholesaler's business or the assignment of the wholesaler's rights under the agreement.

History. Acts 1991, No. 8, § 6; 1991, No. 866, § 6.

A.C.R.C. Notes. As enacted in (b), the language "if the proposed transferee is

other than a designated member" immediately preceded "or if the transferee other than a designated member meets such

nondiscriminatory, material, and reasonable qualifications."

CASE NOTES

In General.

Brewing company's obligation under the Arkansas Beer Wholesaler's Act (Act), § 3-5-1101 et seq., to approve a transfer of the wholesaler's business was conditioned upon the distributor's submitting written notice of intent to transfer; without this written notice, the company had no duty

under the Act to approve a transfer and, because the distributor provided no written notice, it had no claim against the company for failure to approve a transfer. *Southeastern Distrib. Co. v. Miller Brewing Co.*, 366 Ark. 560, 223 S.W.3d 806 (2006).

3-5-1111. Conditions for modification of agreement.

(a) Notwithstanding any agreement and except as otherwise provided for in this subchapter, a supplier shall not amend or modify an agreement, cause a wholesaler to resign from an agreement, or cancel, terminate, fail to renew, or refuse to continue under an agreement, unless the supplier has complied with all of the following:

(1) Has satisfied the applicable notice requirements of this section;

(2) Has acted in good faith; and

(3) Has good cause for the amendment, modification, cancellation, termination, nonrenewal, discontinuance, or forced resignation.

(b) For each amendment, modification, termination, cancellation, nonrenewal, or discontinuance, the supplier shall have the burden of proving:

(1) That it has acted in good faith;

(2) That the notice requirements under this section have been complied with; and

(3) That there was good cause for the amendment, modification, termination, cancellation, nonrenewal, or discontinuance.

(c)(1) Notwithstanding any agreement and except as otherwise provided in this section, and in addition to the time limits set forth in subdivision (d)(4) of this section, the supplier shall furnish written notice of the amendment, modification, termination, cancellation, nonrenewal, or discontinuance of an agreement to the wholesaler not less than thirty (30) days before the effective date of the amendment, modification, termination, cancellation, nonrenewal, or discontinuance.

(2) The notice shall be by certified mail and shall contain all of the following:

(A) A statement of intention to amend, modify, terminate, cancel, not renew, or discontinue the agreement;

(B) A statement of the reason for the amendment, modification, termination, cancellation, nonrenewal, or discontinuance; and

(C) The date on which the amendment, modification, termination, cancellation, nonrenewal, or discontinuance takes effect.

(d) Notwithstanding any agreement, good cause shall exist for the purposes of a termination, cancellation, nonrenewal, or discontinuance under subdivision (a)(3) of this section when all of the following occur:

(1) There is a failure by the wholesaler to comply with a provision of the agreement which is both reasonable and of material significance to the business relationship between the wholesaler and the supplier;

(2) The supplier first acquired knowledge of the failure described in subdivision (d)(1) of this section not more than twenty-four (24) months before the date notification was given pursuant to subsection (c) of this section;

(3) The wholesaler was given notice by the supplier of failure to comply with the agreement; and

(4) The wholesaler has been afforded thirty (30) days in which to submit a plan of corrective action to comply with the agreement and an additional ninety (90) days to cure such noncompliance in accordance with the plan.

(e) Notwithstanding subsections (a) and (c) of this section, a supplier may terminate, cancel, fail to renew, or discontinue an agreement immediately upon written notice given in the manner and containing the information required by subsection (c) of this section, if any of the following occur:

(1) Insolvency of the wholesaler, the filing of any petition by or against the wholesaler under any bankruptcy or receivership law, or the assignment for the benefit of creditors or dissolution or liquidation of the wholesaler which materially affects the wholesaler's ability to remain in business;

(2) Revocation or suspension of the wholesaler's state or federal license by the appropriate regulatory agency whereby the wholesaler cannot service the wholesaler's sales territory for more than thirty-one (31) days;

(3) The wholesaler, or a partner or an individual who owns ten percent (10%) or more of the partnership or stock of a corporate wholesaler, has been convicted of a felony under the United States Code or the laws of any state which reasonably may adversely affect the good will or interest of the wholesaler or supplier. However, an existing stockholder or stockholders, or partner or partners, or a designated member or members, shall have, subject to the provisions of this subchapter, the right to purchase the partnership interest or the stock of the offending partner or stockholder prior to the conviction of the offending partner or stockholder, and if the sale is completed prior to conviction the provisions of this subdivision (3) shall not apply;

(4) There was fraudulent conduct relating to a material matter on the part of the wholesaler in dealings with the supplier or its product. Provided, however, the supplier shall have the burden of proving fraudulent conduct relating to a material matter on the part of the wholesaler in any legal action challenging such termination;

(5)(A) The wholesaler failed to confine to the designated sales territory its sales of a brand or brands to retailers.

(B) Subdivision (e)(5)(A) of this section does not apply if there is a dispute between two (2) or more wholesalers as to the boundaries of the assigned territory and the boundaries cannot be determined by a reading of the description contained in the agreements between the supplier and the wholesalers;

(6) A wholesaler has failed to pay for beer ordered and delivered in accordance with established terms and the wholesaler fails to make full payment within two (2) business days after receipt of written notice of the delinquency and demand for immediate payment from the supplier;

(7) A wholesaler intentionally has made a transfer of the wholesaler's business, other than a transfer to a designated member without prior written notice to the supplier, and has failed, within thirty (30) days from the receipt of written notice from the supplier of its intent to terminate on the ground of such transfer, to reverse said transfer of the wholesaler's business;

(8) A wholesaler intentionally has made a transfer of the wholesaler's business, other than a transfer to a designated member, although the wholesaler has prior to the transfer received from the supplier a timely notice of disapproval of the transfer in accordance with this subchapter;

(9) The wholesaler intentionally ceases to carry on business with respect to any of the supplier's brand or brands previously serviced by a wholesaler in its territory designated by the supplier, unless such cessation is due to force majeure or to labor dispute and the wholesaler has made good faith efforts to overcome such events. Provided, however, this shall affect only that brand or brands with respect to which the wholesaler ceased to carry on business.

(f)(1) Notwithstanding subsections (a), (c), and (e) of this section, a supplier may terminate, cancel, not renew, or discontinue an agreement upon not less than thirty (30) days' prior written notice if the supplier discontinues production or discontinues distribution in this state of all the brands sold by the supplier to the wholesaler.

(2) Provided, however, nothing in this section shall prohibit a supplier from:

(A) Upon not less than thirty (30) days' notice, discontinuing the distribution of any particular brand or package of beer; or

(B) Conducting test marketing of a new brand of beer which is not currently being sold in this state, provided that the supplier has notified the Director of the Alcoholic Beverage Control Division in writing of its plans to test market, which notice shall describe the market area in which the test shall be conducted, the name or names of the wholesaler or wholesalers who will be selling the beer, the name or names of the brand of beer being tested, and the period of time, not to exceed eighteen (18) months, during which the testing will take place.

SUBCHAPTER 12 — MICROBREWERY — RESTAURANTS

SECTION.	SECTION.
3-5-1201. Legislative determinations and intent.	3-5-1205. Fees and taxes.
3-5-1202. Definitions.	3-5-1206. Licenses — Application.
3-5-1203. Effect on other laws.	3-5-1207. Operation without license prohibited.
3-5-1204. Licenses — Scope — Restrictions.	3-5-1208. Rules and regulations.

Effective Dates. Acts 1999, No. 1065, § 6: Emergency clause failed to pass. Emergency clause provided: “It is hereby found and determined by the Eighty-second General Assembly that present law is inadequate as it relates to the serving of alcoholic beverages at festivals; that this act clarifies that law; and that this act should go into effect as soon as possible so that the benefits hereof will be available during the upcoming festival season. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

RESEARCH REFERENCES

Am. Jur. 45 Am. Jur. 2d, Intox. L., §§ 23, 123.	C.J.S. 32 C.J.S., Evid., § 546. 66 C.J.S., Nuis. § 62.
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3-5-1201. Legislative determinations and intent.

- (a) The General Assembly reaffirms the policy of this state of strict enforcement of laws and regulations applicable to the manufacture or sale of beer including, but not limited to, those establishing the three-tier distribution system with prohibitions against ownership and employment interests between the three (3) tiers, or the “three-tier system”.
- (b) The General Assembly determines:
- (1) That the tourist and the convention industries contribute substantially to the revenues of business enterprises in this state and that income from the tourist trade, conventions, and allied industries is essential to the continued well-being and prosperity of this state;
- (2) That there is extreme competition among states throughout the nation for the tourist and convention business; and
- (3) That all reasonable steps should be taken to retain, foster, and encourage this business and to create favorable competitive conditions therefor in this state.
- (c) In order to encourage tourists and conventions to come to Arkansas, it is essential that visitors to the state be provided accommoda-

tions, services, and facilities of a nature to which they are accustomed and competitive with those offered in other states and areas.

(d) It is the intent and purpose of this subchapter to authorize the legal operation of microbrewery-restaurants as herein provided as a limited exception to the three-tier system.

History. Acts 1991, No. 611, § 1.

3-5-1202. Definitions.

As used in this subchapter, unless the context otherwise requires:

- (1) "Barrel" means thirty-one (31) gallons;
- (2) "Beer" means any fermented liquor made from malt or any substitute therefor and having an alcoholic content not in excess of five percent (5%) by weight;
- (3) "Beer and malt beverage law or regulation" means any law of this state, or any regulation promulgated and adopted with respect thereto, which is:
 - (A) Applicable to a person applying for or holding a license to manufacture beer or malt beverage; or
 - (B) Applicable to a person applying for or holding a license to sell beer or malt beverage in a restaurant for consumption on or off the licensed premises;
- (4) "Board" means the Alcoholic Beverage Control Board of this state, or its successor agency;
- (5) "Conflicting beer or malt beverage law or regulation" means any beer or malt beverage law or regulation which prohibits or conflicts with the otherwise legal licensing and operation of microbrewery-restaurants, as authorized in this subchapter, by requiring any brewer to sell only to a licensed wholesaler, or requiring any licensed retailer to sell only beer or malt beverage purchased from a licensed wholesaler, or prohibiting any brewer or retailer from having any ownership or employment interest in the business of the other or the premises of the other, or requiring that the excise and enforcement tax on beer or malt beverage manufactured by a brewer be paid by a licensed wholesaler, or any beer or malt beverage law or regulation of similar direct or indirect effect;
- (6) "Director" means the Director of the Alcoholic Beverage Control Division of this state, or its successor agency;
- (7) "Dry area" means any area in this state in which the manufacture or sale of beer is prohibited by a local-option election heretofore or hereafter held pursuant to applicable laws of this state;
- (8) "Federal regulations" means regulations adopted by the United States Bureau of Alcohol, Tobacco, Firearms and Explosives applicable to and consistent with a microbrewery-restaurant operation as authorized in this subchapter, incorporated herein by this reference, including, but not limited to, 27 CFR Part 25, 25.25;
- (9) "Malt beverage" means any liquor brewed from the fermented juices of grain and having an alcoholic content of not less than five percent (5%) nor more than twenty-one percent (21%) by weight;

(10) "Person" means any natural person, partnership, association, or corporation; and

(11) "Restaurant" means any public or private place which is kept, used, maintained, advertised, and held out to the public or to a private or restricted membership as a place where complete meals are actually and regularly served, such place being provided with adequate and sanitary kitchen and dining equipment and a seating capacity of at least fifty (50) people and having employed a sufficient number and kind of employees to prepare, cook, and serve suitable food for its guests or members. At least one (1) meal per day shall be served, and the place shall be open a minimum of five (5) days per week, with the exception of holidays, vacations, and periods of redecorating.

History. Acts 1991, No. 611, § 1; 1995, No. 491, § 1.

3-5-1203. Effect on other laws.

Every provision of this subchapter shall be subject to all beer and malt beverage laws and regulations, except that conflicting beer and malt beverage laws and regulations shall be inapplicable to any provision of this subchapter to the extent that they conflict herewith.

History. Acts 1991, No. 611, § 1; 1995, No. 491, § 2.

3-5-1204. Licenses — Scope — Restrictions.

(a) The Director of the Alcoholic Beverage Control Division may issue a microbrewery-restaurant license which shall authorize the licensee to do the following:

(1) To operate a microbrewery which shall manufacture one (1) or more varieties of beer or malt beverage in an aggregate quantity not to exceed five thousand (5,000) barrels per year and to store any such beer or malt beverage and any other beer or malt beverage which the microbrewery-restaurant licensee may purchase from wholesalers licensed by this state on the microbrewery-restaurant licensed premises;

(2) To operate a restaurant which shall be the sales outlet for beer or malt beverage manufactured by the microbrewery and which shall sell the beer or malt beverage and any other beer or malt beverage which the microbrewery-restaurant licensee may purchase from wholesalers licensed by this state for consumption on the licensed premises;

(3) To sell on the premises beer or malt beverages manufactured by the microbrewery in brewery-sealed packages at retail directly to the consumer for off-premise consumption;

(4) To provide products it manufactures to charitable or nonprofit organizations or sell for resale products it manufactures to charitable or nonprofit organizations holding valid special event permits as provided for by the Alcoholic Beverage Control Board, except that the microbrewery-restaurant licensee may not sell to nonprofit organizations holding

private club licenses. The sale of those products shall be limited to the duration of the particular special event; and

(5) To sell beer or malt beverages manufactured by the microbrewery-restaurant to a nonprofit corporation leasing space in the microbrewery-restaurant or in an adjoining building.

(b) The director may additionally issue a microbrewery-restaurant distribution permit to a microbrewery-restaurant licensee. This permit will allow the microbrewery-restaurant licensee to:

(1) Sell beer or malt beverage of its own manufacture to a wholesale dealer licensed by this state for the purpose of resale to other retail license holders as set forth by § 3-4-605 and § 3-5-101, dealing with wholesale distribution of beer and malt beverage; and

(2) Maintain a separate brewing facility as needed to meet demand, except that all facilities utilized by the microbrewery-restaurant licensee shall not in the aggregate produce over five thousand (5,000) barrels of beer and malt beverage per year, and all products produced by any separate facility must be sold to a licensed wholesaler. At no time does this allow any product produced by any separate facility to be transported to the restaurant location for retail sale for consumption on or off the licensed premises.

(c) The director shall not issue a microbrewery-restaurant license if the microbrewery-restaurant premises is in a dry area.

History. Acts 1991, No. 611, § 1; 1995, No. 491, § 3; 1997, No. 916, § 1; 1999, No. 1065, § 2; 2001, No. 805, § 1.

A.C.R.C. Notes. Prior to the 2001 amendment, § 3-5-1204(b) contained additional language as follows: "(2) Any beer and malt beverage produced by the microbrewery-restaurant licensee for sale to a licensed wholesaler shall not be considered as on-premises sales for the purpose of determining Sunday sales eligibility of the restaurant as set forth by the board. (3) Any permittee licensed under this subsection (b) may transport and ship its beer

and malt beverages out of state by common carrier or other appropriate parcel delivery service, and any common carriers or other appropriate parcel delivery services may accept beer and malt beverages manufactured by the licensee for delivery outside the State of Arkansas to business entities licensed and qualified to accept such products in their respective states."

The above language was neither set out in nor specifically deleted by Act 805. Because of the omission of subdivisions (2) and (3), the remaining language has been redesignated as (b)(1) and (2).

3-5-1205. Fees and taxes.

A microbrewery-restaurant licensee shall:

(1) Pay any applicable city or county license or permit fees and barrelage or taxes and shall pay a state licensing fee to the Alcoholic Beverage Control Division of seven hundred fifty dollars (\$750) per fiscal year to manufacture and sell its beer and malt beverages for consumption both on and off the premises and to sell any other beer and malt beverages purchased from a licensed wholesaler for consumption on the premises;

(2) Measure beer and malt beverages manufactured by the microbrewery, otherwise comply with applicable regulations respecting excise and enforcement tax determination of such beer and malt beverage

ages, and pay any applicable bond or deposit and the amount of the state excise tax and enforcement tax to this state, as required by §§ 3-7-104 and 3-7-111; and

(3) Pay a state permit fee to the Alcoholic Beverage Control Board of one hundred fifty dollars (\$150) per year for the rights and privileges provided by the distribution permit granted as per § 3-5-1204(b).

History. Acts 1991, No. 611, § 1; 1995, No. 491, § 4; 1997, No. 916, § 2; 1999, No. 319, § 2.

3-5-1206. Licenses — Application.

No microbrewery-restaurant license shall be issued unless the applicant shall file with the Director of the Alcoholic Beverage Control Division a verified application, in such form and with such content as the director shall require, accompanied by payment of the applicable fee.

History. Acts 1991, No. 611, § 1.

3-5-1207. Operation without license prohibited.

It shall be unlawful and constitute a Class A misdemeanor for any person not holding a valid microbrewery-restaurant license to operate as a microbrewery-restaurant as herein provided.

History. Acts 1991, No. 611, § 1; 2005, No. 1994, § 193.

Amendments. The 2005 amendment inserted "Class A."

3-5-1208. Rules and regulations.

The Director of the Alcoholic Beverage Control Division and the Alcoholic Beverage Control Board and the Director of the Department of Finance and Administration, and any other applicable agency of this state, shall promulgate and adopt such regulations as they deem necessary for the implementation of this subchapter, which regulations may consist in whole or in part of the federal regulations.

History. Acts 1991, No. 611, § 1.

SUBCHAPTER 13 — NONRESIDENT BEER SELLER'S PERMITS

SECTION.

- 3-5-1301. Short title.
- 3-5-1302. Definitions.
- 3-5-1303. When permit required.
- 3-5-1304. Authorized transactions.
- 3-5-1305. Prohibited actions.
- 3-5-1306. Application for permit.
- 3-5-1307. Wholesale dealers and distributors to import from non-

SECTION.

- resident seller permittees only.
- 3-5-1308. Nonresident seller to be primary American source of supply.
- 3-5-1309. Investigation of permittees.
- 3-5-1310. Administrative sanctions.

Effective Dates. Acts 1995, No. 537, § 15: July 1, 1995.

Acts 1995, No. 537, § 16: July 1, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that present law does not adequately protect the people of the State of Arkansas from unscrupulous activities of nonresident manufacturers, suppliers, brewers and importers of beer; that the present law does not contain procedures for registration of nonresident manufacturers, suppliers, brewers and importers of beer, nor enforcement of current laws against such groups; and that the present law does not empower the Alcoholic Beverage Division to effectively monitor the activities of manufacturers, suppliers, brewers and importers of beer. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1995."

Acts 1999, No. 96, § 11: Feb. 16, 1999. Emergency clause provided: "It is hereby

found and determined by the Eighty-second General Assembly that economic development and the creation of additional jobs for citizens of Arkansas preserves the public peace, health and safety of the State; that the establishment of wholesaler support centers in the State will create additional jobs that would go to other states that are competing for the establishment of such centers, thereby creating the need for our state's business entities to be able to compete for such centers immediately. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

RESEARCH REFERENCES

Am. Jur. 48 Am. Jur. 2d, Intox. L., §§ 125, 137.

C.J.S. 27 C.J.S., DC § 18(6).

3-5-1301. Short title.

This subchapter shall be known as the "Nonresident Beer Seller's Permit Act of 1995".

History. Acts 1995, No. 537, § 1.

3-5-1302. Definitions.

- (a) "Beer" shall have the meaning set forth in § 3-5-202(3).
- (b) "Brewery" shall have the meaning set forth in § 3-5-202(5).
- (c) "Division" shall mean the Alcoholic Beverage Control Division of the Department of Finance and Administration of the State of Arkansas.
- (d) "Malt liquor" shall have the meaning set forth in § 3-1-102(a)(3)(A).
- (e) "Manufacturer" shall have the meaning set forth in § 3-1-102(a)(4).
- (f) "Supplier" shall have the meaning set forth in § 3-5-1102(a)(10).

(g) “Wholesale dealer and distributor” shall have the meaning set forth in § 3-5-202(10).

(h) “Wholesaler support center” means a facility located within a wholesaler’s premises at which beer and malt are stored by a manufacturer for resale to wholesalers or distributors within or without the state.

History. Acts 1995, No. 537, § 2; 1999, No. 96, § 1.

3-5-1303. When permit required.

(a) A nonresident seller’s permit is required of any manufacturer, brewery, supplier, or other such person who sells or distributes beer or malt to any wholesale dealer and distributor, regardless of whether the sale is consummated inside or outside this state.

(b)(1) The holder of a nonresident seller’s permit may also apply for and receive a wholesaler support center permit.

(2) An applicant for a wholesaler support center permit must also be the holder of a nonresident seller’s permit.

History. Acts 1995, No. 537, § 3; 1999, No. 96, § 2.

3-5-1304. Authorized transactions.

(a) The holder of a nonresident seller’s permit is authorized to:

(1) Solicit and take orders for beer or malt from a wholesale dealer and distributor; and

(2) Ship or cause to be shipped into this state beer or malt in consummation of a sale made to a wholesale dealer or distributor.

(b) Any other provisions of this title notwithstanding, the holder of a wholesaler support center permit is also authorized to:

(1) Solicit and take orders for beer or malt from a wholesaler dealer and distributor;

(2) Ship or cause to be shipped into this state to the premises of the wholesaler support center non-tax paid beer or malt for storage and resale to a wholesale dealer or distributor within or without this state;

(3) Fill orders for beer or malt from in-state wholesale dealers or distributors provided that the receiving in-state wholesaler or distributor pays all applicable state taxes in the same manner as would apply had the wholesaler purchased from an out-of-state nonresident seller permit holder;

(4) Pay to or compensate a wholesaler or distributor for rented or leased space within the wholesaler’s premises for the storage of beer or malt within the confines of the wholesaler support center; and

(5) Compensate a wholesaler or distributor for the loading, unloading and handling of beer or malt and for administrative and other expenses associated with operating the wholesaler support center on the wholesaler’s premises.

History. Acts 1995, No. 537, § 4; 1999, No. 96, § 3.

3-5-1305. Prohibited actions.

No holder of a nonresident seller's permit or wholesaler support center permit nor any officer, director, agent, or employee of the holder nor any affiliate of the holder, regardless of whether the affiliation is corporate or by management, direction, or control, may do any of the following:

(1) Fail to make or file a report with the Alcoholic Beverage Control Division as required by rules of the division;

(2) Advertise any beer or malt contrary to the laws of this state or to the rules of the division or sell beer or malt for resale in this state in violation of advertising or labeling rules of the division;

(3) Sell beer or malt for resale inside this state or cause it to be brought into this state in a size of container prohibited by this subchapter or by a rule of the division;

(4) Solicit or take orders for beer or malt from a person not authorized to import beer or malt into this state for the purpose of resale. Provided, however, a nonresident beer seller permittee also holding a wholesaler support center permit may engage in those activities set forth in § 3-5-1304(b);

(5) Induce, persuade, or influence or attempt to induce, persuade, or influence a person to violate this subchapter or a rule of the division or conspire with a person to violate this subchapter or a rule of the division;

(6) Exercise a privilege granted by a nonresident seller's permit while an order or suspension against the permit is in effect;

(7) Take or fail to take any action that would cause any type of fixing of wholesale or retail prices in the state. Suggestion of wholesale or retail prices will not be considered to be a violation of this provision;

(8) Do any other act by a supplier in violation of § 3-5-1107;

(9) Hold any wholesaler's permit under § 3-5-206; or

(10) Do any other act that violates any regulation adopted by the division.

History. Acts 1995, No. 537, § 5; 1999, No. 96, § 4.

3-5-1306. Application for permit.

(a) Any manufacturer, importer, or other person desiring to obtain a nonresident seller's permit or wholesaler support center permit may make application for such to the Alcoholic Beverage Control Division on forms provided by the division.

(b)(1)(A) In addition, every applicant for a nonresident seller's permit shall pay to the division an annual permit fee, which is established at one hundred dollars (\$100) if such applicant shall have shipped, sold, or otherwise distributed fewer than two hundred (200)

barrels, as defined for excise tax purposes under this Code, of any beer or malt in this state in the year immediately preceding the application.

(B) If such applicant shall have shipped, sold, or otherwise distributed in this state from two hundred (200) to one thousand (1,000) barrels in the year immediately preceding application, such applicant shall pay an annual permit fee of five hundred dollars (\$500).

(C) If such applicant shall have shipped, sold, or otherwise distributed in this state more than one thousand (1,000) barrels in the year immediately preceding application, such applicant shall pay an annual permit fee of one thousand dollars (\$1,000).

(2) Each holder of a permit shall pay the permit fee based on the previous calendar year's shipments into the state.

(c)(1)(A) Each permit shall be valid for one (1) fiscal year which shall run from the first day of July to the last day of June.

(B) Any applicant receiving a permit during the course of any fiscal year shall not be relieved of the obligation to pay the full amount of the annual permit fee.

(2)(A) As long as a permit has not been revoked or cancelled, it shall be renewable for successive years upon the payment of the appropriate annual permit fee on or before June 30 of each calendar year.

(B) Any person not renewing the permit described in subsection (b) of this section on or before June 30 shall be subject to the penalties and provisions provided for in § 3-4-216.

(d) An applicant for a wholesaler support center permit shall pay an annual permit fee of one thousand dollars (\$1,000).

History. Acts 1995, No. 537, § 6; 1999, No. 96, § 5.

3-5-1307. Wholesale dealers and distributors to import from nonresident seller permittees only.

(a) No wholesale dealer and distributor licensed under § 3-5-206 may purchase or order any malt beverage for importation into the state from any source other than one possessed of a nonresident seller's permit.

(b) No such wholesale dealer and distributor may purchase or order any beer or malt liquor for importation into this state from any permittee whose permit has been revoked or suspended after such wholesaler has received notice of the revocation or suspension.

History. Acts 1995, No. 537, § 7.

3-5-1308. Nonresident seller to be primary American source of supply.

(a) No holder of a nonresident seller's permit or wholesaler support center permit may solicit, accept, or fill an order for beer or malt from a holder of any type of wholesaler's permit unless the nonresident seller

or wholesaler support center permittee is the primary American source of supply for the brand of beer or malt which is ordered.

(b)(1) In this section, "primary American source of supply" shall mean:

- (A)(i) The producer;
- (ii) The owner of the commodity at the time it becomes a marketable product; or
- (iii) The bottler; or
- (B) The exclusive agent of any of those.

(2) To be the "primary American source of supply", the nonresident seller or wholesaler support center permittee must be the first source, that is, the closest source to the manufacturer, in the channel of commerce from whom the product can be secured by persons conducting business in Arkansas.

History. Acts 1995, No. 537, § 8; 1999, No. 96, § 6.

3-5-1309. Investigation of permittees.

(a) If a representative of the Alcoholic Beverage Control Division or the Revenue Division of the Department of Finance and Administration wishes to examine the book accounts, records, minutes, letters, memoranda, documents, checks, telegrams, constitution and bylaws, or other records of a nonresident seller's permittee or wholesaler support center permittee, he or she shall make a written request to the permittee or his duly authorized manager or representative or, if the permittee is a corporation, to any officer of the corporation.

(b) When a request for an examination is made, the person to whom it is directed shall immediately allow the representative to conduct the examination.

(c) The representative may investigate the organization, conduct, and management of any nonresident seller's permittee or wholesaler support center permittee and may make copies of any records which in the judgment of the representative may show or tend to show that the permittee has violated the law, a regulation, or the terms of his or her permit.

(d) A representative may not make public any information obtained under this section except to a law enforcement officer of this state or in connection with an administrative or judicial proceeding in which the state or the Alcoholic Beverage Control Division is a party concerning the cancellation or suspension of a nonresident seller's permit or wholesaler support center permit, the collection of taxes due under state law, or the violation of state law.

(e) The Alcoholic Beverage Control Division may revoke or suspend a nonresident seller's permit or wholesaler support center permit in accordance with this title if the permittee or his authorized representative fails or refuses to permit an examination authorized by this section or to permit the making of copies of any documents as provided

by this section, without regard to whether the document is inside or outside the state, or if the permittee or his or her authorized representative fails or refuses to answer a question of an officer incident to an examination or investigation in progress.

History. Acts 1995, No. 537, § 9; 1999, No. 96, § 7.

3-5-1310. Administrative sanctions.

- (a) The Director of the Alcoholic Beverage Control Division and the Alcoholic Beverage Control Board are empowered to administer the full range of penalties available for other administrative proceedings before it, including, but not limited to, fines, suspension, cancellation, or revocation of such permits which have been found to be in violation of the provisions of this subchapter.
- (b) Any violation of this subchapter shall be classified as a Class A permit violation pursuant to the terms of § 3-4-402.

History. Acts 1995, No. 537, § 10.

SUBCHAPTER 14 — ARKANSAS NATIVE BREWERY ACT

SECTION.	SECTION.
3-5-1401. Title.	3-5-1407. Transportation.
3-5-1402. Legislative determinations and intent.	3-5-1408. Fees and taxes.
3-5-1403. Definitions.	3-5-1409. Beer and malt beverage education.
3-5-1404. Effect on other laws.	3-5-1410. Licenses — Application.
3-5-1405. Licenses — Scope — Restrictions.	3-5-1411. Operation without license prohibited.
3-5-1406. Additional license to sell native beer and malt beverages not required.	3-5-1412. Dry areas prohibited.
	3-5-1413. Rules and regulations.
	3-5-1414. Construction.

3-5-1401. Title.

This subchapter shall be known and may be cited as the “Arkansas Native Brewery Act”.

History. Acts 2003, No. 1805, § 1.

3-5-1402. Legislative determinations and intent.

- (a) The General Assembly finds that:
- (1) The creation and long-term success of small businesses in this state is vital to the continued economic well-being and prosperity of the State of Arkansas; and
- (2) All reasonable steps should be taken to retain, foster, and encourage small business and to create favorable conditions for small business in this state.

(b) It is the intent and purpose of this subchapter to authorize the legal operation of native breweries in order to assure that these favorable conditions exist in this state.

History. Acts 2003, No. 1805, § 2.

3-5-1403. Definitions.

As used in this subchapter:

- (1) "Barrel" means thirty-one (31) gallons;
- (2) "Beer" means any fermented liquor made from malt or any substitute having an alcoholic content of not more than five percent (5%) by weight;
- (3) "Board" means the Alcoholic Beverage Control Board;
- (4) "Brewery" means the facilities of a native brewer that operate a small brewery, contract brewing company, microbrewery, or restaurant;
- (5) "Contract brewing company" means any licensed brewery that hires another company to produce a portion of its beer or malt beverage;
- (6) "Director" means the Director of the Alcoholic Beverage Control Division of the Department of Finance and Administration;
- (7) "Malt beverage" means any liquor brewed from the fermented juices of grain and having an alcoholic content of no less than five percent (5%) nor more than twenty-one percent (21%) by weight;
- (8) "Microbrewery-restaurant" means any restaurant that manufactures one (1) or more varieties of beer or malt beverage in an aggregate quantity of not more than five thousand (5,000) barrels per year and stores the beer or malt beverages on the premises or on any adjacent premises;
- (9) "Native brewer" means any person who is licensed by the division to manufacture and sell beer and malt beverages at a small brewery or microbrewery-restaurant;
- (10) "Native brewery" means a small brewery or microbrewery-restaurant;
- (11) "Person" means any natural person, partnership, association, or corporation;
- (12) "Producer brewery" means any licensed brewery, domestic or foreign, that manufactures or packages beer or malt beverages for a small brewery, contract brewing company, microbrewery, or restaurant;
- (13) "Restaurant" means any public or private facility that:
 - (A) Is kept, used, maintained, advertised, and held out to the public or to a private or restricted membership as a place where complete meals are regularly served, and the place is provided with adequate and sanitary kitchen and dining equipment and has a seating capacity of at least fifty (50) people and employs a sufficient number of employees to prepare, cook, and serve food suitable for its guests or members; and
 - (B) Serves at least one (1) meal per day, and the place is open a minimum of five (5) days per week, with the exception of holidays, vacations, and periods of redecorating; and

(14) “Small brewery” means any licensed facility that manufactures fewer than 60,000 barrels of beer and malt beverages per year for sale or consumption.

History. Acts 2003, No. 1805, § 3.

3-5-1404. Effect on other laws.

Every provision of this subchapter is subject to all beer and malt beverage laws and regulations not in conflict with the provisions of this subchapter.

History. Acts 2003, No. 1805, § 4.

3-5-1405. Licenses — Scope — Restrictions.

(a) The Director of the Alcoholic Beverage Control Division may issue a license for a licensee:

(1) To operate a small brewery that:

(A) Manufactures at its licensed facility no less than thirty-five percent (35%) of its beer and malt beverages to be sold in the state or purchases from a producer brewery beer or malt beverages in an aggregate quantity not to exceed sixty thousand (60,000) barrels per year;

(B) Sells to wholesale or to the consumer for consumption either on or off the premises brand name products of the licensed facility; and

(C) Stores any beer and malt beverages legally purchased for resale on the premises; or

(2) To operate a microbrewery-restaurant that:

(A) Manufactures beer and malt beverages in an aggregate quantity not to exceed five thousand (5,000) barrels per year;

(B)(i) Sells to wholesale or retail dealers or to the consumer for consumption either on or off the premises.

(ii) However, off-premise sales are limited to brand name products of the licensed facility; and

(C) Stores any beer and malt beverages purchased for resale on the premises.

(b) Notwithstanding the provisions of any other law to the contrary, beer and malt beverages may be sold for on-premises or off-premises consumption during all legal operating hours in which business is normally and legally conducted on the premises, if:

(1) The brewery provides tours through its facility; and

(2) Only sealed containers are removed from the premises.

(c)(1) A native brewery may provide beer and malt beverages it manufactures to charitable or nonprofit organizations or sell for resale beer and malt beverages it manufactures to charitable or nonprofit organizations holding valid special event permits issued by the Alcoholic Beverage Control Board.

(2) The sale of those products is limited to the duration of the particular special event.

(d) Any person holding a valid microbrewery-restaurant license is considered a native brewery licensee that maintains production limits according to the definition of microbrewery-restaurant in § 3-5-1403.

History. Acts 2003, No. 1805, § 5.

3-5-1406. Additional license to sell native beer and malt beverages not required.

(a) Any wholesale or retail dealer that is licensed to sell beer and malt beverages may sell beer and malt beverages produced by native brewers without any additional license fee.

(b) Any retail dealer not licensed to sell beer and malt beverages may sell beer and malt beverages produced by native brewers if the retailer pays a retail dealer's license fee of fifteen dollars (\$15.00) to the Alcoholic Beverage Control Division.

(c) Any person not licensed as a wholesale dealer of beer and malt beverages may sell on a wholesale basis beer and malt beverages produced by native brewers if the person pays a wholesale dealer's license fee of fifty dollars (\$50.00) to the division.

History. Acts 2003, No. 1805, § 6.

3-5-1407. Transportation.

(a) A native brewery may transport its beer and malt beverages along any highway, road, street, or other thoroughfare of travel.

(b) Any native brewery may ship its products out of the state by common carrier or other appropriate parcel delivery service, and common carriers and other appropriate parcel delivery services may accept beer and malt beverages from Arkansas native brewers for delivery outside the state.

(c) Any native brewery in this state may ship its products within the state by common carrier or other appropriate parcel delivery service, and common carriers and other appropriate parcel delivery services may accept beer and malt beverages from Arkansas native breweries for delivery within the state if the beer and malt beverages are only shipped to persons holding a wholesale permit to purchase, store, sell, or dispense beer and malt beverages.

History. Acts 2003, No. 1805, § 7.

3-5-1408. Fees and taxes.

A native brewer shall:

(1) Pay any applicable city or county license or permit fees and barrelage or taxes and shall pay a state licensing fee to the Alcoholic Beverage Control Division of two hundred fifty dollars (\$250) per fiscal year to:

(A) Manufacture and sell its beer and malt beverages for consumption, both on and off the premises; and

(B) Sell any other beer and malt beverages purchased from a licensed dealer for consumption on or off the premises;

(2) Measure beer and malt beverages manufactured by the native brewer or purchased from a producer brewery, or otherwise comply with applicable regulations respecting excise and enforcement tax determination of the beer and malt beverages, and pay any applicable bond or deposit and the amount of the state excise tax and enforcement tax to this state as required, but is free from the fees and taxes provided in § 3-5-205 and as required by §§ 3-7-104 and 3-7-111; and

(3) Pay a tax at the rate of seven dollars and fifty cents (\$7.50) per barrel, and proportionately for larger and smaller gallonages per barrel, on all beer and malt beverages in quantities of up to sixty-thousand (60,000) barrels per year and sold or offered for sale in the state.

History. Acts 2003, No. 1805, § 8.

3-5-1409. Beer and malt beverage education.

(a)(1) Native brewers may be allowed to conduct beer and malt beverage tasting events for educational or promotional purposes at any location in this state if approved by the Alcoholic Beverage Control Division and if written notice is given by the division to the native brewer at least five (5) days before the event.

(2) Requests for approval to conduct beer and malt beverage tasting events must be received by the division at least two (2) weeks before the event.

(b) Beer and malt beverage tasting events may be held in any facility licensed by the division if written notice is given by the division under subsection (a) of this section.

(c) The criminal penalties for drinking in public as prescribed by § 5-71-212 are not applicable to any beer and malt beverage tasting event approved by the division under this section.

History. Acts 2003, No. 1805, § 9.

3-5-1410. Licenses — Application.

No native brewers license shall be issued unless the applicant files with the Director of the Alcoholic Beverage Control Division a verified application in a form and content that the director requires, accompanied by payment of the applicable fee.

History. Acts 2003, No. 1805, § 10.

3-5-1411. Operation without license prohibited.

It is a Class C misdemeanor for any person not holding a valid native brewers license to operate as a native brewer.

History. Acts 2003, No. 1805, § 11.

3-5-1412. Dry areas prohibited.

It is unlawful for the Director of the Alcoholic Beverage Control Division to issue a native brewers license in any city, county, township, or other area in this state if the sale or possession of beer and malt beverages is unlawful.

History. Acts 2003, No. 1805, § 12.

3-5-1413. Rules and regulations.

The Director of the Alcoholic Beverage Control Board and the Director of the Department of Finance and Administration may adopt rules for the implementation of this subchapter.

History. Acts 2003, No. 1805, § 13.

3-5-1414. Construction.

This subchapter is supplemental to all other laws concerning alcoholic beverages and repeals only those laws or parts of laws in direct conflict with it.

History. Acts 2003, No. 1805, § 14.

SUBCHAPTER 15 — TEMPORARY WINE CHARITABLE AUCTION LICENSE**SECTION.**

- 3-5-1501. Temporary wine charitable auction permit.
- 3-5-1502. Authorized location of auction.
- 3-5-1503. Disposition of auction proceeds.
- 3-5-1504. Origination of wine to be auctioned.

SECTION.

- 3-5-1505. Prohibited activities.
- 3-5-1506. Permit duration, fees, and gross receipts.
- 3-5-1507. Administrative rules.

3-5-1501. Temporary wine charitable auction permit.

(a) There is established a temporary wine charitable auction permit.

(b) The Alcoholic Beverage Control Division shall issue the permit to qualifying charitable nonprofit organizations that are exempt from taxation under § 501 of the Internal Revenue Code of 1986, as it existed on January 1, 2005, and that have received tax exempt status from the Internal Revenue Service pursuant to § 501(c)(3) or (4) of the Internal Revenue Code of 1986, as it existed on January 1, 2005.

(c) The permit shall authorize the qualifying charitable nonprofit organization to sell wine for the purpose of raising funds for the

charitable organization during a live or silent auction conducted by the charitable organization.

History. Acts 2005, No. 1157, § 1.

1986, referred to in this section, are codi-

U.S. Code. Sections 501 and 501(c)(3) and (4) of the Internal Revenue Code of

fied as 26 U.S.C. §§ 501 and 501(c)(3) and (4), respectively.

3-5-1502. Authorized location of auction.

(a) The holder of a temporary wine charitable auction permit may conduct an auction in any area of the State of Arkansas where the sale of the wine is authorized.

(b) The holder of a permit may conduct an auction at a premises of another on-premises permit that is licensed to sell or dispense the wine if:

(1) The wine to be auctioned is kept separate from the wine sold, stored, or served at the permitted premises; and

(2) The wine, whether sold or unsold, is removed from the premises immediately following the auction.

History. Acts 2005, No. 1157, § 1.

3-5-1503. Disposition of auction proceeds.

The proceeds from the sale of wine sold at a charitable auction as authorized by this subchapter shall be deposited into the account of the charitable organization that holds the temporary wine charitable auction permit.

History. Acts 2005, No. 1157, § 1.

3-5-1504. Origination of wine to be auctioned.

(a) The wine to be auctioned shall be obtained by:

(1) Donation from any person or an out-of-state winery, if the laws of the out-of-state winery allow the donation;

(2) Donation or purchase from a licensed winery within the state; or

(3) Donation or purchase from a licensed Arkansas wholesaler.

(b) If wine to be auctioned is obtained as provided in this subchapter, the provisions of § 3-3-216 shall not apply to any person who, for purposes of sale of the wine at a charitable auction:

(1) Ships or transports the wine into Arkansas;

(2) Stores or possesses the wine in Arkansas; or

(3) Purchases the wine at a charitable auction as provided for in this subchapter.

History. Acts 2005, No. 1157, § 1.

3-5-1505. Prohibited activities.

The holder of a temporary wine charitable auction permit shall not:

(1) Auction any wine that has not been obtained as provided for in this subchapter;

(2) Conduct more than two (2) auctions during any calendar year;

(3) When the auction is conducted on a premises that holds a permit for the sale or dispensing of wine, allow the auctioned wine to be consumed on the permitted premises; and

(4) Pay a commission or promotional fee to:

(A) Any person to arrange or conduct an auction authorized under this subchapter; or

(B) Arrange for the donation of wine to be auctioned by the charitable organization.

History. Acts 2005, No. 1157, § 1.

3-5-1506. Permit duration, fees, and gross receipts.

(a) The temporary wine charitable auction permit shall be issued for a period of not more than five (5) days.

(b) The fee for the permit shall be fifty dollars (\$50.00).

(c) The gross receipts from the sale of wine at a charitable auction under this section shall not be subject to the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., nor shall the taxes imposed under title 3 of the Arkansas Code be applicable.

History. Acts 2005, No. 1157, § 1.

3-5-1507. Administrative rules.

(a) The Alcoholic Beverage Control Division shall adopt regulations governing the application, issuance, and use of a temporary wine charitable auction permit.

(b)(1) The division shall also adopt rules establishing penalties for violation of this subchapter or rules adopted pursuant to this subchapter.

(2) However, penalties adopted by the division shall not exceed penalties which may be imposed on charitable organizations holding other types of temporary permits.

History. Acts 2005, No. 1157, § 1.

SUBCHAPTER 16. — FREE TRADE AMONG SMALL WINERIES**SECTION.**

3-5-1601. Definition.

3-5-1602. Licensing of small farm wineries.

3-5-1603. Restaurant wine license — Retail malt beverage license.

SECTION.

3-5-1604. Existing native winery licenses.

3-5-1605. License fees generally.

3-5-1606. Rules.

3-5-1607. Sales on any day of the week.

SECTION.

3-5-1608. Bond.

3-5-1609. Penalty.

A.C.R.C. Notes. Acts 2007, No. 668, § 4, provided: "In the event that this act, or any part thereof, is determined by a court to be unconstitutional, this act shall become void and all wines, including native wines, distributed for sale in the State of Arkansas shall be distributed under § 3-2-401 et seq. and sold by licensed retailers under § 3-4-201 et seq."

Effective Dates. Acts 2007, No. 668, § 6: Mar. 29, 2007. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that lawsuits are currently pending in both Federal Court for the Eastern District of Arkansas and Pulaski County Circuit Court regarding the constitutionality of the laws being amended by this sub-

chapter; that the lawsuits are being defended by the office of the Arkansas Attorney General; and that immediate implementation of this act is necessary because any delay may result in substantial costs to the state. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

3-5-1601. Definition.

As used in this subchapter, "small farm winery" means a wine-making establishment that sells no more than two hundred fifty thousand (250,000) gallons of wine, the alcoholic content of which does not exceed twenty-one percent (21%) annually as reported on the federal tax report form TTB F 5120-17, as it existed on January 1, 2007. For the purposes of this subchapter, a winery or a group of wineries consisting of at least fifty percent (50%) common ownership is to be considered one (1) small farm winery.

History. Acts 2007, No. 668, § 1.

3-5-1602. Licensing of small farm wineries.

(a) An in-state or out-of-state small farm winery may apply to the Alcoholic Beverage Control Board for a small farm winery license.

(b)(1) A small farm winery may be licensed by the board.

(2) A license shall:

(A) Show the registration number and location of the small farm winery;

(B) Show the name of the person that owns or operates the small farm winery; and

(C) Be conspicuously posted at the small farm winery.

(c)(1) A small farm winery license authorizes the licensee to perform the following functions without the small farm winery having to obtain a separate license:

(A) Manufacture wines and bottle wines produced by that small farm winery;

(B) Bottle wines produced by another small farm winery;

(C) Serve on the premises or at small farm winery off-premises retail sites complimentary samples of wine produced by the small farm winery or another licensed small farm winery, if the small farm winery or its off-premises retail site is located in a wet territory;

(D) Sell at retail by the drink or by the package wine produced on the premises of the small farm winery or produced by another small farm winery, if all sales occur in a wet territory and at:

(i) The small farm winery off-premises retail sites; or

(ii) Fairs and food and wine festivals, with the permission and the consent of the management of the events. A sales and use tax permit is also required;

(E) Sell and transport wine produced on the premises of the small farm winery or of another small farm winery to wholesale and retail license holders and small farm winery license holders. To exercise the privileges of this subdivision (c)(1)(E), the small farm winery must obtain a wine wholesale permit; and

(F) Sell for consumption on the premises wine produced by the small farm winery or another small farm winery and purchased by the drink or by the package at the licensed premises, if the small farm winery is located in a wet territory.

(2) A small farm winery off-premises retail site shall be separately licensed under § 3-5-1605(a)(3) before performing the operations listed in subdivision (c)(1) of this section at the off-premises retail site.

(d) An applicant for a small farm winery license shall submit with its application to the board a copy of the small farm winery's federal basic permit and proof documenting its annual wine production.

History. Acts 2007, No. 668, § 1.

3-5-1603. Restaurant wine license — Retail malt beverage license.

(a) The Alcoholic Beverage Control Board may issue a restaurant wine license and a retail malt beverage license to a small farm winery license holder, if the issuance of the restaurant wine license and the retail malt beverage license are in connection with the establishment and operation of a restaurant, hotel, inn, bed and breakfast, museum, conference center, or any similar business enterprise for the purpose of promoting viticulture, enology, and tourism.

(b) The retail malt beverage license issued under this section shall limit the license to the sale of malt beverages for consumption on the premises only.

History. Acts 2007, No. 668, § 1.

3-5-1604. Existing native winery licenses.

(a) A person that holds a license as a native winery issued under this chapter before March 29, 2007, may conduct business as a small farm winery until the native wine license expires.

(b) Upon the expiration of a native wine license issued under this chapter before March 29, 2007, the Alcoholic Beverage Control Board may issue a small farm winery license as part of the renewal process if the winery:

- (1) Meets the criteria under § 3-5-1602(c)(1);
- (2) Is in good standing; and
- (3) Submits the winery's federal basic permit and proof of annual wine production to the board.

History. Acts 2007, No. 668, § 1.

3-5-1605. License fees generally.

(a) For the privilege of doing business respectively, as indicated in this section, there shall each fiscal year beginning July 1 be imposed, assessed, levied, and collected the following license fees:

(1)(A) For the privilege of manufacturing wine in quantities not to exceed five thousand gallons (5,000 gals.), a license fee of one dollar (\$1.00) per one thousand (1,000) gallons shall be paid by the manufacturer.

(B) However, any person in this state shall have the right to manufacture free from this license fee from fruits or vegetables wine for consumption in their homes by themselves and their guests but not for sale, in quantities not to exceed two hundred gallons (200 gals);

(2) For the privilege of manufacturing small farm wine in excess of five thousand gallons (5,000 gals.), a license fee of two hundred fifty dollars (\$250) shall be paid by the manufacturer;

(3) For the privilege of selling small farm winery wine except by a manufacturer for consumption at the manufacturer's winery, there shall be paid for each retail dealer's license a fee of fifteen dollars (\$15.00). This subdivision (a)(3) applies to all retail licenses for grocery stores, convenience stores, liquor stores, and package stores that sell malt beverages and wine;

(4) For the privilege of selling small farm wine except by a manufacturer at the manufacturer's winery, there shall be paid for each wholesale dealer's license a fee of fifty dollars (\$50.00). This subdivision (a)(4) applies to all beverage alcohol wholesale distributors;

(5) For the privilege of selling small farm winery wine at the winery or in this state, there is imposed, assessed, and levied a tax of seventy-five cents (75¢) per gallon upon all the small farm winery wine manufactured and sold in this state under the provisions of this subchapter; and

(6) For the privilege of selling small farm winery light wine at the winery or in this state, there is imposed, assessed, and levied a tax of

twenty-five cents (25¢) per gallon upon all light wine manufactured and sold in this state under the provisions of this subchapter.

(b) Existing licenses. (1) A person that holds a license for the sale of native wine issued under this chapter before March 29, 2007, may conduct business as a small farm winery wholesaler or retailer until the native wine license expires.

(2) Upon the expiration of a native wine license issued under this chapter on or before March 29, 2007, the Alcoholic Beverage Control Board may issue a new license as part of the renewal process if the wholesaler or retailer:

(A) Meets the criteria under this section; and

(B) Is in good standing.

(c) Tax on wine shall be based on the amount sold.

History. Acts 2007, No. 668, § 1.

3-5-1606. Rules.

The Alcoholic Beverage Control Board shall promulgate rules to implement this subchapter.

History. Acts 2007, No. 668, § 1.

3-5-1607. Sales on any day of the week.

Notwithstanding any law to the contrary, small farm winery wine may be sold at any winery located in this state for on-premises or off-premises consumption on any day of the week.

History. Acts 2007, No. 668, § 1.

3-5-1608. Bond.

By consent of the Director of the Department of Finance and Administration, the small farm winery may file a bond with the director, the bond to be approved by him or her, which will entitle the small farm winery to the privilege of making settlement of its taxes every thirty (30) days, the time to be set by the director.

History. Acts 2007, No. 668, § 1.

3-5-1609. Penalty.

A person who violates any provision of this subchapter or any reasonable rule or regulation adopted by the Director of the Alcoholic Beverage Control Division or the Director of the Department of Finance and Administration shall be guilty of a Class B misdemeanor.

History. Acts 2007, No. 668, § 1.

CHAPTER 6

NATIVE BRANDY LAW

SECTION.

3-6-101. Title.

3-6-102. Manufacture and sale authorized.

3-6-103. Administration by Alcoholic Beverage Control Division.

SECTION.

3-6-104. Permits.

3-6-105. Tax on sales.

3-6-106. Collection of fees and taxes.

Publisher's Notes. This chapter contains provisions which exclusively regulate the manufacture, sale, and transportation of native brandy. However, native brandy is also regulated under provisions of this title governing "alcoholic beverages" generally. Consequently, the provisions of this chapter must be read in conjunction with the remainder of the title in order to form a complete picture of the regulatory scheme as it applies to native brandy.

Effective Dates. Acts 1971, No. 585, § 34: approved Apr. 6, 1971. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that in order to establish an orderly procedure which will insure the monthly and quarterly distribution of funds for the necessary services and operations of the state government,

as provided for in this act, it is necessary that the provisions of this act become effective immediately; that under the provisions of this act seriously needed improvements for many of our public institutions are contemplated, and only the provisions of this act will provide such funds which will be adequate to alleviate this situation; and that only the provisions of this act will correct many of our financial difficulties, and which otherwise may deprive the citizens of this state from receiving the benefits for which the operation of state government contemplates. Therefore, an emergency is hereby declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall take effect and be in full force from and after its passage."

RESEARCH REFERENCES

A.L.R. Intoxicating liquors: products liability. 42 A.L.R.4th 253.

3-6-101. Title.

This chapter shall be known and may be cited as the "Native Brandy Law".

History. Acts 1953, No. 163, § 1; A.S.A. 1947, § 48-706.

3-6-102. Manufacture and sale authorized.

It shall be lawful for any person under the terms and provisions hereof to manufacture and to sell within the State of Arkansas, and to export without the state, brandy, cordials, or other distillates, or their components, which are made from agricultural or horticultural prod-

ucts such as peaches, apples, cherries, plums, grapes, boysenberries, blackberries, and other fruits produced solely within the state, when such person shall have become qualified to do so under the provisions of this chapter.

History. Acts 1953, No. 163, § 2; A.S.A. 1947, § 48-707.

3-6-103. Administration by Alcoholic Beverage Control Division.

The Alcoholic Beverage Control Division or its successor shall have the right to regulate the manufacture and sale of the products authorized in § 3-6-102 and shall make reasonable rules and regulations governing the manufacture and sale thereof. Except as otherwise specifically provided in this chapter, all other laws now in effect governing the manufacture and sale of intoxicating liquors shall be deemed applicable.

History. Acts 1953, No. 163, § 7; A.S.A. 1947, § 48-712.

3-6-104. Permits.

(a) Upon application by any qualified person, the Alcoholic Beverage Control Division or any successor thereof performing its functions as now defined by law shall issue to the person a manufacturer's permit which shall authorize and permit the person to manufacture and sell, under the terms and provisions hereof, brandy, cordials, or other distillates or component parts thereof manufactured solely from agricultural or horticultural products produced within the State of Arkansas.

(b) However, no permit shall be granted to any person, firm, or corporation who shall not have been or whose members or all the stockholders thereof shall not have been a citizen and resident maintaining bona fide residence and domicile within the state for a continuous period of five (5) years next preceding the date of making such application.

(c) A permit application shall be accompanied by a permit fee of two hundred fifty dollars (\$250) for the issuance of such permit.

(d) When the permit is issued, it shall be without an expiration date.

(e) So long as the permit shall remain in full force and effect, the holder shall pay an annual permit fee of two hundred fifty dollars (\$250).

(f) The permit shall be cancelled only upon reasonable cause after hearing in the manner now provided by law.

(g) The permit shall not be transferable.

(h) The holder of a permit shall be authorized to manufacture the products defined in § 3-6-102 and to sell them without the necessity of obtaining any further license or permit to the holders of bona fide

wholesale or retail liquor permits issued in the manner now provided by law and may sell the products to the holders of permits to manufacture native wines in this state. Manufacturers shall be authorized to sell such products at retail on the premises of the authorized place of manufacture.

History. Acts 1953, No. 163, §§ 3-5; A.S.A. 1947, §§ 48-708 — 48-710; Acts 1993, No. 1028, § 1.

Cross References. Causes for revoca-

tion, generally, § 3-4-301.

Payment of renewal fees, § 3-4-216.

Revocation and suspension proceedings generally, §§ 3-2-212 — 3-2-217.

3-6-105. Tax on sales.

(a) The holder of a permit shall pay a tax of one dollar (\$1.00) per gallon, payable and collectible in the manner as in the case of other taxes on intoxicating liquors now provided on all of the products sold for consumption within the State of Arkansas to the holders of wholesale or retail liquor permits within the state.

(b) The manufacturer may sell the products for export without the state, or to the manufacturers of native wine in this state for use in the fortification of the wine, free of payment of the taxes, under rules and regulations as may be provided pursuant to the authority of this chapter.

History. Acts 1953, No. 163, § 6; A.S.A. 1947, § 48-711.

Cross References. Tax collection procedure, §§ 3-7-107, 3-7-201.

3-6-106. Collection of fees and taxes.

(a) The permit fees and the tax herein provided shall be collected in the same manner as all other liquor taxes and under such reasonable rules and regulations as the Director of the Department of Finance and Administration or his or her successor may provide.

(b) The permit fees and taxes shall be deposited in the State Treasury as general revenues to the credit of the State Apportionment Fund, there to be allocated to the various funds, fund accounts, and accounts participating in general revenues in the respective proportions to each as provided by law and be used for the respective purposes set forth in the Revenue Stabilization Law, § 19-5-101 et seq.

History. Acts 1953, No. 163, § 8, as added by 1953, No. 118, § 36(A), as added

by 1971, No. 585, § 12; A.S.A. 1947, § 48-713.

CHAPTER 7

EXCISE TAXES

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. SPECIAL RETAIL TAX.

SUBCHAPTER

3. PAYMENT BY WHOLESALERS AND IMPORTERS.
4. BEER.
5. WINE.

Publisher's Notes. The tax collection procedures of this chapter may be super-

seded by the Arkansas Tax Procedure Act, § 26-18-101 et seq.

RESEARCH REFERENCES

Am. Jur. 45 Am. Jur. 2d, Intox. L., § 203 et seq.

C.J.S. 48 C.J.S., Intox. L., § 199 et seq.
67 C.J.S., Officers, § 211 et seq.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 3-7-101. Purpose.
- 3-7-102. Definition.
- 3-7-103. Penalty — Revocation.
- 3-7-104. Rate of tax.
- 3-7-105. Malt tax — Reporting and payments.
- 3-7-106. Shipping permits.
- 3-7-107. Enforcement — Rules and regulations.
- 3-7-108. Disposition of funds.
- 3-7-109. Delinquent taxes.
- 3-7-110. Wrongful tax collections.

SECTION.

- 3-7-111. Additional taxes.
- 3-7-112. Methods of identifying imported liquors.
- 3-7-113. Distillers and wholesalers — Records.
- 3-7-114. Wholesalers and retailers — Obtaining liquor illegally — Nonpayment of taxes.
- 3-7-115. Sacramental wine.
- 3-7-116. Tax rebate for qualified manufacturers.

Effective Dates. Acts 1935, No. 109, § 15: approved Mar. 16, 1935. Emergency clause provided: "Whereas, the present state revenue does not meet the needs for maintenance and development of the State Government, and its agencies and the state's credit is threatened with impairment, an emergency is declared to exist and this Act shall become a law and be effective on its passage and approval or nonaction by the Governor."

Acts 1941, No. 356, § 7: Mar. 26, 1941. Emergency clause provided: "Whereas, it has been ascertained that large quantities of 'moonshine' intoxicating liquors are being manufactured and sold in the State of Arkansas and large quantities of intoxicating liquors upon which the state tax has not been paid are also being sold in the State of Arkansas and the state is losing great sums of money in the form of revenue by reason thereof, an emergency is hereby declared and this act shall be in full force and effect immediately from and after its passage and approval."

Acts 1947, No. 108, § 5: approved Feb. 22, 1947. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that existing laws providing for the distribution of state revenues are such that a moderate diminution of certain of the revenues would have the effect of curtailing the activities of certain necessary agencies of the State Government, and that only the provisions of this act will correct a situation which otherwise may deprive the citizens of this state from receiving the benefits which the operation of the State Government contemplates. Therefore, an emergency is hereby declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall take effect and be in full force from and after its passage."

Acts 1949, No. 282, § 17: Mar. 18, 1949. Emergency clause provided: "Whereas, there is at this time discrimination between wholesale and retail dealers and

among themselves; and whereas, such discriminatory practices are detrimental to the welfare of the state, and it being immediately necessary for the preservation of the public peace, health, and safety, an emergency is hereby declared to exist and this act shall be in full force and effect from and after its passage and approval."

Acts 1969, No. 169, § 5: Mar. 5, 1969. Emergency clause provided: "The General Assembly finds that the State of Arkansas is in immediate need of additional funds for general revenue purposes. Accordingly, an emergency is declared to exist, and this act being necessary for the preservation of the public health, peace, and safety shall be effective from and after its passage and approval."

Acts 1969, No. 271, § 7: Mar. 18, 1969. Emergency clause provided: "It is hereby found and determined by the General Assembly that the alcoholic beverage laws of this state are not being adequately enforced; that there is a pressing need for additional personnel for the proper enforcement of these laws; and that only by the immediate passage of this act can the additional revenues be raised to employ the necessary additional personnel to properly enforce the alcoholic beverage laws of this state. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety shall become effective from and after the passage and approval of this act."

Acts 1971, No. 585, § 34: approved Apr. 6, 1971. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that in order to establish an orderly procedure which will insure the monthly and quarterly distribution of funds for the necessary services and operations of the state government, as provided for in this act, it is necessary that the provisions of this act become effective immediately; that under the provisions of this act seriously needed improvements for many of our public institutions are contemplated, and only the provisions of this act will provide such funds which will be adequate to alleviate this situation; and that only the provisions of this act will correct many of our financial difficulties, and which otherwise may deprive the citizens of this state from receiving the

benefits for which the operation of state government contemplates. Therefore, an emergency is hereby declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall take effect and be in full force from and after its passage."

Acts 1983, No. 826, § 5: July 1, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that tax stamps are now required for malt liquor, causing an undue burden on taxpayers, and unnecessary expense for the administration of the malt liquor tax by the State of Arkansas, and the passage of this act is necessary to provide for the preservation of the public peace, health, and safety. Therefore, an emergency is hereby declared to exist and this act shall be in full force and effect from and after July 1, 1983."

Acts 1983, No. 844, § 7: May 1, 1983. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that the collection of state general revenues during the current fiscal year has diminished to such extent that the activities of certain necessary agencies of the state government are being and will continue to be curtailed, and that the provisions of this act will aid in the correction of a situation which otherwise will deprive the citizens of this state from receiving benefits which the operation of state government contemplates. Therefore, this act being necessary for the preservation of the public health and safety shall take effect and be in full force effective May 1, 1983."

Acts 1987, No. 424, § 10: July 1, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that the State of Arkansas is in serious danger of losing revenues which are necessary to provide adequate funding for schools and other essential services required by the citizens of this state and the provisions of this act are necessary to avoid a substantial reduction in state revenues. Therefore, an emergency is hereby declared to exist, and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect on and after July 1, 1987."

Acts 1995, No. 537, § 15: July 1, 1995.

Acts 1995, No. 537, § 16: July 1, 1995. Emergency clause provided: "It is hereby found and determined by the General As-

sembly that present law does not adequately protect the people of the State of Arkansas from unscrupulous activities of nonresident manufacturers, suppliers, brewers and importers of beer; that the present law does not contain procedures for registration of nonresident manufacturers, suppliers, brewers and importers of beer, nor enforcement of current laws against such groups; and that the present law does not empower the Alcoholic Beverage Division to effectively monitor the activities of manufacturers, suppliers, brewers and importers of beer. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1995."

Acts 2007, No. 1203, § 2: Apr. 4, 2007. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that beer and malt beverage manufacturers and whole-

salers are an important component of the state economy; that in order to be competitive, beer and malt beverage manufacturers are in urgent need of immediate tax relief; that failure to provide immediate tax relief to beer and malt beverage manufacturers could cause irreparable harm to these manufacturers and the state economy; and that this act is immediately necessary to enable the manufacturers to continue operations and contribute to the state economy. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on the first day of the calendar month after: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

CASE NOTES

Construction.

Sections 3-7-101 — 3-7-104 and 3-7-106 — 3-7-110 and Acts 1935, No. 108, providing for issuance of permits and licenses for the manufacture, sale, transportation,

possession or other disposition of intoxicating liquors should be read together. *Southwestern Distilled Prods., Inc. v. State ex rel. Butt*, 203 Ark. 524, 160 S.W.2d 208 (1941).

3-7-101. Purpose.

It is declared not to be the purpose of §§ 3-7-101 — 3-7-104 and 3-7-106 — 3-7-110 to impose a duplicate or double license tax on the manufacturing, selling, blending, rectifying, or mixing in this state, or transporting in this state of spirituous liquors, vinous liquors, wines other than Arkansas wines, or beer or malt beverages, as measured by the quantity of spirituous liquors, vinous liquors, wines other than Arkansas wines, or beer or malt beverages, manufactured, sold, blended, rectified, mixed, or transported in or into this state in conformity thereto, and any other license tax imposed by law heretofore passed is declared to be a privilege tax or permit fee.

History. Acts 1935, No. 109, § 7; Pope's Dig., § 14179; A.S.A. 1947, § 48-405.

3-7-102. Definition.

As used in §§ 3-7-101 — 3-7-104 and 3-7-106 — 3-7-110, unless the context otherwise requires, “person” means every corporation, association, copartnership, limited liability company, or individual.

History. Acts 1935, No. 109, § 1; Pope’s Dig., § 14173; A.S.A. 1947, § 48-401; Acts 1995, No. 1160, § 23.

3-7-103. Penalty — Revocation.

Any person who shall violate any of the provisions of §§ 3-7-101 — 3-7-104 and 3-7-106 — 3-7-110 shall be guilty of a violation and upon conviction be fined not less than five hundred dollars (\$500) nor more than one thousand dollars (\$1,000).

History. Acts 1935, No. 109, § 11; Pope’s Dig., § 14183; A.S.A. 1947, § 48-409; Acts 2005, No. 1994, § 32.

Amendments. The 2005 amendment substituted “violation” for “misdemeanor”.

Cross References. Penalty for selling, transporting, or possessing untaxed liquor, § 3-3-216.

Revocation procedure generally, §§ 3-2-212 — 3-2-217.

3-7-104. Rate of tax.

There is levied and there shall be collected as provided by law and regulation the following taxes:

(1)(A) A tax at the rate of two dollars and fifty cents (\$2.50) on each gallon of spirituous liquor sold or offered for sale in the State of Arkansas.

(B) “Spirituous liquor”, as used in this section, means liquor distilled from the fermented juices of grain, fruits, or vegetables and any mixture containing liquor distilled from the fermented juices of grain, fruits, or vegetables, with an alcoholic content of twenty-one percent (21%) or more alcohol by weight;

(2)(A) A tax at the rate of one dollar (\$1.00) on each gallon of premixed spirituous liquor sold or offered for sale in the State of Arkansas.

(B) “Premixed spirituous liquor”, as used in this section, means liquor distilled from the fermented juices of grain, fruits, or vegetables, having an alcoholic content of less than twenty-one percent (21%) alcohol by weight but more than five percent (5%) alcohol by weight;

(3)(A) A tax at the rate of fifty cents (50¢) on each gallon of light spirituous liquor sold or offered for sale in the State of Arkansas.

(B) “Light spirituous liquor”, as used in this section, means liquor distilled from the fermented juices of grain, fruits, or vegetables and any mixture containing liquor distilled from the fermented juices of grain, fruits, or vegetables, having an alcoholic content between one-half of one percent (0.5%) and five percent (5%) alcohol by weight;

(4)(A) A tax at the rate of seventy-five cents (75¢) on each gallon of vinous liquor, except wines fermented and manufactured within the

State of Arkansas from grapes, berries, or other fruits grown in Arkansas, as authorized by §§ 3-5-401 — 3-5-412 [repealed], sold or offered for sale in the State of Arkansas.

(B) "Vinous liquor", as used in this section, means the fermented juices of grapes, berries, or other fruits and any other mixture containing the fermented juices of grapes, berries, or other fruits, having an alcoholic content of more than five percent (5%) alcohol by weight;

(5)(A) A tax at the rate of twenty-five cents (25¢) on each gallon of light wine except light wine fermented and manufactured within the State of Arkansas from grapes, berries, or other fruits grown in Arkansas, as authorized by §§ 3-5-401 — 3-5-412 [repealed], sold or offered for sale in the State of Arkansas.

(B) "Light wine", as used in this section, means the fermented juices of grapes, berries, or fruits and any other mixture containing the fermented juices of grapes, berries, or fruits, having an alcoholic content of between one-half of one percent (0.5%) and five percent (5%) alcohol by weight;

(6)(A) A tax at the rate of seven dollars and fifty cents (\$7.50) per barrel of thirty-two gallons (32 gals.), and proportionately for larger and smaller gallonages per barrel, on all beer having an alcoholic content of five percent (5%) or less by weight sold or offered for sale in the State of Arkansas.

(B) This tax shall be paid in the manner prescribed by § 3-7-401 et seq.; and

(7) A tax at the rate of twenty cents (20¢) on each gallon of malt liquor sold or offered for sale in the State of Arkansas.

History. Acts 1935, No. 109, § 3, as added by Acts 1947, No. 108, § 1; 1959, No. 113, § 1; 1963, No. 196, § 1; 1969, No. 169, § 1; 1983, No. 826, § 1; 1983, No. 844, §§ 3-5; A.S.A. 1947, § 48-402, 48-402n; Acts 1987, No. 424, §§ 1-3; 1993, No. 403, § 1.

Publisher's Notes. This section formerly required the affixation of tax stamps to spirituous, vinous, and malt

liquors. Acts 1983, No. 826, § 1, deleted that requirement in its entirety, while § 2 of the same act specifically provided that on and after July 1, 1983, the purchase and affixation of tax stamps would no longer be required for malt liquors under Acts 1935, No. 109.

Cross References. Native brewery, exemption from tax, § 3-5-1408.

CASE NOTES

ANALYSIS

Constitutionality.

Revocation of License.

Constitutionality.

Former similar section did not impose a burden on interstate commerce in violation of federal constitutional provisions. *McCarroll v. Clyde Collins Liquors, Inc.*,

198 Ark. 896, 132 S.W.2d 19 (1939) (decision under prior law).

Revocation of License.

The Commissioner of Revenues (now the Director of the Alcoholic Beverage Control Division) had power to cancel retail liquor license where licensee sold liquor for consumption in the state upon which the export tax only had been paid

instead of the regular retail tax, without the necessity of a conviction through prosecution in the courts for such violations. *Whitmore v. McCarroll*, 198 Ark. 211, 128 S.W.2d 244 (1939) (decision under prior law).

3-7-105. Malt tax — Reporting and payments.

(a) The excise tax levied on malt liquors by § 3-7-104 shall be reported and paid to the Director of the Department of Finance and Administration on or before the fifteenth day of the month following the month in which the wholesaler or other person authorized to sell malt liquors obtains delivery of such malt liquors from the supplier.

(b) The director shall provide forms necessary for reporting the tax due and shall enforce the tax pursuant to the Arkansas Tax Procedure Act, § 26-18-101 et seq.

History. Acts 1983, No. 826, § 3; A.S.A. 1947, § 48-402.2.

3-7-106. Shipping permits.

(a)(1) It shall be unlawful for any person to ship or transport or cause to be shipped or transported into the State of Arkansas any spirituous liquors, vinous liquors, wines other than Arkansas wines, or beer or malt beverages from points without the state without first having obtained a permit from the Director of the Alcoholic Beverage Control Division.

(2) No railroad company, express company, bonded truck company or truck line operating under a certificate or permit issued by the Arkansas State Highway and Transportation Department, nor any river transportation company shall receive for shipment or ship into this state any package or receptacle containing distilled spirits unless a copy of the permit showing that payment of the taxes as are required by law has been made shall accompany the shipment.

(3) The permit shall be in such form as may be prescribed by the director, and all such shipments into the state shall be governed by such rules and regulations as may be promulgated by the director.

(4) However, the railroad or express company or river transportation company shall not be required to obtain any permit to transport distilled spirits but shall be subject to all rules and regulations promulgated by the director.

(b)(1) It shall be unlawful for any person who is permitted by law to manufacture, sell, or transport spirituous liquors, vinous liquors, wines other than Arkansas wines, or beer or malt beverages to transport or cause spirituous liquors, vinous liquors, wines other than Arkansas wines, or beer or malt beverages to be transported by any means of transportation except as may be prescribed by the rules and regulations of the director.

(2) However, spirits may be transported by truck or wagon from and to freight or express depots, to and from the place or places of business of the permittees and upon the premises of the permittees, from and to

one (1) place of business to another place of business of the permittee, provided that the owner of trucks or wagons transporting distilled liquor as aforesaid, excepting trucks and wagons owned and operated by a railroad or express company, or bonded truck company or truck line operating under a certificate or permit issued by the Arkansas State Highway and Transportation Department, or a river transportation company, or by the person permitted by law to manufacture, sell, or transport spirituous liquors, vinous liquors, wines other than Arkansas wines, or beer or malt beverages shall procure a permit to engage in transportation and shall execute a bond satisfactory in amount, form, and as to surety, to be approved by the director, conditioned upon the lawful transportation of spirituous liquors, vinous liquors, wines other than Arkansas wines, or beer or malt beverages.

History. Acts 1935, No. 109, § 5; Pope's Dig., § 14177; Acts 1941, No. 356, § 5; A.S.A. 1947, § 48-404.

Publisher's Notes. As to regulations requiring reports rather than transportation permits for beer, see § 3-7-401.

Cross References. Reports in lieu of permits, § 3-7-401.

Spirituous, vinous, and malt liquors defined, § 3-1-102.

CASE NOTES

ANALYSIS

Constitutionality.

Construction.

Failure to Secure Permit.

Judicial Review.

Regulations.

—Compliance.

Constitutionality.

In the absence of action by Congress, the state has the right to require those engaged in interstate transportation of liquors and using state facilities and receiving its police protection while engaged in such commercial pursuit to procure from the Commissioner of Revenues (now the Director of the Alcoholic Beverage Control Division) a permit conforming to regulations harmonious with this section, though no revenue fee may be exacted for the permit. *Duckworth v. State*, 201 Ark. 1123, 148 S.W.2d 656, aff'd, 314 U.S. 390, 62 S. Ct. 311, 86 L. Ed. 294 (1941).

This section is not unconstitutional as imposing an unreasonable burden upon interstate commerce. *Chambless v. Cannon*, 81 F. Supp. 885 (W.D. Ark. 1949).

Seizure of truckload of whiskey being transported through Arkansas where driver did not have a permit did not violate due process clause of Ark. Const., Art.

2, § 8, or the interstate commerce clause of U.S. Const., Art. 1, § 8, since U.S. Const. Amend. 21 prohibits transportation of intoxicating liquor into any state in violation of state law. *Welborn v. Morley*, 219 Ark. 569, 243 S.W.2d 635 (1951).

Construction.

The term "into" as used in this section includes shipments entering the state, but consigned to points within or beyond. *Duckworth v. State*, 201 Ark. 1123, 148 S.W.2d 656, aff'd, 314 U.S. 390, 62 S. Ct. 311, 86 L. Ed. 294 (1941).

Failure to Secure Permit.

Transportation of whiskey through the state without a permit was a violation of this section warranting conviction. *Jones v. State*, 198 Ark. 354, 129 S.W.2d 249 (1939).

Trucker transporting liquor through Arkansas without an Arkansas permit was subject to arrest for violation of this section. *Chambless v. Cannon*, 81 F. Supp. 885 (W.D. Ark. 1949).

Where vehicle permit had not been secured from authorities for transportation of alcoholic beverages through the state, the shipment did not enjoy exempt passage, and the driver of the truck was properly apprehended and fined for being in possession of liquor in a dry county.

Cactus Distrib. Co. v. State, 249 Ark. 113, 458 S.W.2d 149 (1970).

Judicial Review.

The refusal of the Commissioner of Revenues (now the Director of the Alcoholic Beverage Control Division) in reasonable circumstances to issue permit for interstate transportation of liquor would be subject to judicial review and immediate compulsion through mandamus. Duckworth v. State, 201 Ark. 1123, 148 S.W.2d 656, aff'd, 314 U.S. 390, 62 S. Ct. 311, 86 L. Ed. 294 (1941).

Regulations.

Regulation requiring those proposing to transport liquor through the state to procure a permit was not in excess of authority conferred by the legislature. Duckworth v. State, 201 Ark. 1123, 148 S.W.2d 656, aff'd, 314 U.S. 390, 62 S. Ct. 311, 86 L. Ed. 294 (1941).

Commissioner of Revenues (now the Director of the Alcoholic Beverage Control Division) has the power to designate at what times, from what places, and over what highways he will permit cargoes of spirituous liquors to leave the state, but the power must be exercised in a reason-

able manner and shipper should be afforded a reasonable opportunity to conform to and to comply with regulations. Hardin v. Spiers, 202 Ark. 804, 152 S.W.2d 1010 (1941).

Commissioner of Revenues (now the Director of the Alcoholic Beverage Control Division) has power to issue regulations pertaining to transportation of liquors through the state, to require that persons appointed by and responsible to him should make inspections and to ignore inspections otherwise made, but regulations must receive a reasonable interpretation and application in order not to impose unnecessary burdens on interstate commerce intended to be regulated. Hardin v. Spiers, 202 Ark. 804, 152 S.W.2d 1010 (1941).

—Compliance.

Testimony showing attempt in good faith to comply with regulations pertaining to inspection at point of exit justified decree enjoining cancellation of permit. Hardin v. Spiers, 202 Ark. 804, 152 S.W.2d 1010 (1941).

Cited: Morley v. Fifty Cases of Whiskey, 216 Ark. 528, 226 S.W.2d 344 (1950).

3-7-107. Enforcement — Rules and regulations.

(a) Sections 3-7-101 — 3-7-104 and 3-7-106 — 3-7-110 shall be administered and enforced by the Director of the Alcoholic Beverage Control Division and the Director of the Department of Finance and Administration.

(b) The Director of the Alcoholic Beverage Control Division and the Director of the Department of Finance and Administration are authorized and directed to issue permits as provided for in §§ 3-7-101 — 3-7-104 and 3-7-106 — 3-7-110, for the manufacture, sale, and transportation of distilled spirits and to enforce the license tax provisions of §§ 3-7-101 — 3-7-104 and 3-7-106 — 3-7-110 and the collection of the license taxes imposed hereby and to promulgate reasonable rules and regulations for those purposes.

History. Acts 1935, No. 109, § 8; Pope's Dig., § 14180; A.S.A. 1947, § 48-406.

CASE NOTES

ANALYSIS

Judicial Review.

Regulations.

—Compliance with Regulations.

Judicial Review.

Refusal of the Commissioner of Revenues (now the Director of the Alcoholic Beverage Control Division) in reasonable circumstances to issue permit for inter-

state transportation of liquor would be subject to judicial review and immediate compulsion through mandamus. *Duckworth v. State*, 201 Ark. 1123, 148 S.W.2d 656, *aff'd*, 314 U.S. 390, 62 S. Ct. 311, 86 L. Ed. 294 (1941).

Regulations.

Regulation of the Commissioner of Revenues (now the Director of the Alcoholic Beverage Control Division) requiring those proposing to transport liquor through the state to procure a permit was not in excess of authority conferred by the legislature. *Duckworth v. State*, 201 Ark. 1123, 148 S.W.2d 656, *aff'd*, 314 U.S. 390, 62 S. Ct. 311, 86 L. Ed. 294 (1941).

Commissioner of Revenues (now the Director of the Alcoholic Beverage Control Division) has the power to designate at what times, from what places, and over what highways he will permit cargoes of spirituous liquors to leave the state, but the power must be exercised in a reasonable manner and shipper should be afforded a reasonable opportunity to conform to and to comply with regulations.

Hardin v. Spiers, 202 Ark. 804, 152 S.W.2d 1010 (1941).

Commissioner of Revenues (now the Director of the Alcoholic Beverage Control Division) has power to issue regulations pertaining to transportation of liquors through the state, to require that persons appointed by and responsible to him should make inspections and to ignore inspections otherwise made, but regulations must receive a reasonable interpretation and application in order not to impose unnecessary burdens on interstate commerce intended to be regulated. *Hardin v. Spiers*, 202 Ark. 804, 152 S.W.2d 1010 (1941).

—Compliance with Regulations.

Testimony showing attempt in good faith to comply with regulations of the Commissioner of Revenues (now the Director of the Alcoholic Beverage Control Division) pertaining to inspection at point of exit justified decree enjoining cancellation of permit. *Hardin v. Spiers*, 202 Ark. 804, 152 S.W.2d 1010 (1941).

Cited: *Leach v. Cook*, 211 Ark. 763, 202 S.W.2d 359 (1947).

3-7-108. Disposition of funds.

All taxes, penalties, and costs collected by the Director of the Department of Finance and Administration under the provisions of §§ 3-7-101 — 3-7-104 and 3-7-106 — 3-7-110 shall be general revenues and shall be deposited in the State Treasury to the credit of the State Apportionment Fund. The Treasurer of State, on or before the fifth day of the month next following the month during which such funds shall have been received by him or her, shall allocate and transfer the funds to the various State Treasury funds in the proportions to each as provided by law, after first transferring to the General Revenue Fund of the State Apportionment Fund an amount equivalent to the cost of collection and other charges as also provided by law.

History. Acts 1935, No. 109, § 9, as added by 1947, No. 108, § 2; A.S.A. 1947, § 48-407.

3-7-109. Delinquent taxes.

On the failure of any person, liable therefor, to pay the taxes imposed by §§ 3-7-101 — 3-7-104 and 3-7-106 — 3-7-110 within fifteen (15) days after the taxes have become due, he or she shall be deemed delinquent. A penalty of twenty percent (20%) on the amount of license tax due shall attach. The Auditor of State shall at once cause proceedings to be

instituted for the collection of the license tax, with such interest and penalties as may be provided by law for the collection of other taxes.

History. Acts 1935, No. 109, § 10; Pope's Dig., § 14182; A.S.A. 1947, § 48-408.

CASE NOTES

Prosecuting Attorneys.

Prosecuting attorneys have concurrent authority with the Auditor of State and the Commissioner of Revenues (now the Director of the Alcoholic Beverage Control Division) to enforce the liquor laws of the state, and prosecuting attorney was

within his authority when he proceeded by proper action to seize alcoholic liquors for the purpose of collecting past due taxes thereon. *Southwestern Distilled Products, Inc. v. Trimble*, 198 Ark. 970, 132 S.W.2d 196 (1939).

3-7-110. Wrongful tax collections.

(a) No suit shall be maintained in any court to restrain or delay the collection or payment of the tax levied by §§ 3-7-101 — 3-7-104 and 3-7-106 — 3-7-110.

(b) The aggrieved taxpayer shall pay with or without protest the tax as and when required and may at any time within two (2) years from the date of the payment sue the state through its agent, the Auditor of State, in an action at law in any state or federal court otherwise having jurisdiction of the parties and subject matter for the recovery of the tax paid with legal interest thereon from the date of payment.

(c) If it is finally determined that the tax or any part thereof was wrongfully collected, for any reason, it shall be the duty of the Auditor of State to issue a warrant on the Treasurer of State for the amount of the tax so adjudged to have been wrongfully collected together with legal interest thereon. The Treasurer of State shall pay the warrant amount at once, in preference to other warrants or claims against the state.

(d) A separate suit need not be filed for each individual payment made by any taxpayer, but a recovery may be had in one (1) suit for as many payments as may have been made.

History. Acts 1935, No. 109, § 12; Pope's Dig., § 14184; A.S.A. 1947, § 48-410.

3-7-111. Additional taxes.

(a)(1) In addition to all other fees and taxes now imposed by law, there are levied and shall be collected the following additional fees and taxes:

(A) An additional tax of five cents (5¢) per case on each case of native wine produced and sold in this state, including light wines, wine coolers, and any other mixture containing the fermented juices

of grapes, berries, fruits, or vegetables regardless of the percentage of alcoholic content, the tax to be paid by the manufacturer of the wine;

(B) A consumer enforcement tax of twenty-five cents (25¢) per thirty-two-gallon barrel of beer that may be passed on by the retailer to the consumer or may be absorbed by the retailer, the tax to be collected by the beer wholesalers acting as agent for the state;

(C) In addition to the fee imposed for the privilege of operating a dispensary under § 3-4-604, an additional fee of one hundred dollars (\$100) for the issuance of each permit; and

(D) In addition to the permit fee now imposed under § 3-4-605 for the privilege of storing, transporting, and selling at wholesale spirituous, vinous, or malt liquors, an additional tax of three hundred dollars (\$300).

(2) All additional permit fees and taxes imposed under subdivisions (a)(1)(B)-(D) of this section shall be levied and collected in the same manner as now provided by law.

(3) The tax imposed by subdivision (a)(1)(A) of this section shall be reported monthly by the manufacturer on all sales made in the State of Arkansas to Arkansas wholesalers, retailers, or consumers, and the manufacturer shall remit the tax with each report.

(4) All additional permit fees and taxes levied by subdivisions (a)(1)(A)-(D) of this section shall be deposited in the State Treasury as general revenues and credited to the State Apportionment Fund. These amounts shall be allocated and transferred to the various funds, fund accounts, and accounts participating in general revenues in the respective proportions to each as provided by law and shall be used for the respective purposes set forth in the Revenue Stabilization Law, § 19-5-101 et seq.

(b)(1) There are levied and there shall be collected as provided by law and regulation:

(A) A tax at the rate of twenty cents (20¢) per case on liquor, cordials, liqueurs, premixed spirituous liquors, and specialties having an alcoholic content of twenty-one percent (21%) or more by weight;

(B) A tax at the rate of five cents (5¢) per case on liquor, cordials, liqueurs, premixed spirituous liquors, light spirituous liquors, and specialties having an alcoholic content of less than twenty-one percent (21%) alcohol by weight; and

(C) A tax at the rate of five cents (5¢) per case on sparkling and still wines, including light wines, regardless of alcoholic content.

(2) These taxes shall be paid by the wholesaler and shall not be passed on by the wholesaler to the retailer or the public. These taxes shall be paid on all such merchandise sold or offered for sale in the State of Arkansas and shall be in addition to any and all other taxes heretofore or hereafter levied and collected on that merchandise.

(3) All taxes, penalties, fines, and costs received by the Director of the Department of Finance and Administration under the provisions of this subsection shall be deposited in the State Treasury as general

revenues to the credit of the State Apportionment Fund. There those amounts shall be allocated to the various funds, fund accounts, and accounts participating in general revenues in the respective proportions to each as provided by law and shall be used for the respective purposes set forth in the Revenue Stabilization Law, § 19-5-101 et seq.

(4) Any person who violates any of the provisions of this subsection shall be guilty of a violation and upon conviction shall be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500).

History. Acts 1949, No. 282, §§ 13, 15; 1949, No. 282, § 14, as added by 1953, No. 118, § 36(B), as added by 1971, No. 585, § 12; 1953, No. 385, § 1; 1969, No. 271, § 1; 1969, No. 271, § 2, as added by 1953, No. 118, § 36(C), as added by 1971, No. 585, § 12; A.S.A. 1947, §§ 48-418, 48-419, 48-1213 — 48-1215; Acts 1987, No. 424, §§ 7, 8; 2005, No. 1994, § 33.

Amendments. The 2005 amendment substituted “violation” for “misdemeanor” in (b)(4).

Cross References. Native brewery, exemption from tax, § 3-5-1408.

Retailers and wholesalers permit fees, §§ 3-4-604, 3-4-605.

Revocation procedure, generally, §§ 3-2-212 — 3-2-217.

3-7-112. Methods of identifying imported liquors.

The Department of Finance and Administration shall, by regulation, establish a method of identifying each case of spirituous liquors to be shipped into Arkansas, prior to such shipment, either by stamps affixed to the cases or by printed evidence of the destination.

History. Acts 1975, No. 447, § 2; A.S.A. 1947, § 48-437.

3-7-113. Distillers and wholesalers — Records.

Distilleries and wholesalers of spirituous liquors shall furnish records as may be required to determine and protect the tax interests of the state.

History. Acts 1975, No. 447, § 3; A.S.A. 1947, § 48-438.

3-7-114. Wholesalers and retailers — Obtaining liquor illegally — Nonpayment of taxes.

(a) Failure of any wholesaler or retailer to obtain spirituous liquors from sources approved by the state for sale or to pay all taxes due on such liquors shall result in revocation of any alcoholic beverage permit held by the licensee.

(b) Further, such action shall be deemed to constitute fraud and shall be punishable as such.

History. Acts 1975, No. 447, § 4; A.S.A. 1947, § 48-439.

3-7-115. Sacramental wine.

(a) All wines sold in the State of Arkansas for use as sacramental wine shall be exempt from all taxes levied on wine by the State of Arkansas.

(b)(1) Each container of sacramental wine sold in the state shall have attached to it a decal containing the words "Sacramental Wine".

(2) The decal shall be provided and attached to the containers by wineries selling sacramental wine in this state.

History. Acts 1987, No. 902, § 1.

3-7-116. Tax rebate for qualified manufacturers.

(a) For purposes of this section:

(1) "Barrel" means thirty-one gallons (31 gals.) of liquid;

(2) "Beer" means any fermented liquor made from malt or any substitute and having an alcoholic content of not more than five percent (5%) by weight;

(3) "Malt beverage" means any liquor brewed from the fermented juices of grain and having an alcoholic content of not less than five percent (5%) or more than twenty-one percent (21%) by weight;

(4)(A)(i) "Qualified manufacturer" means a person that manufactures a combined total of less than twenty-five thousand (25,000) barrels of beer and malt beverage during the twelve-month period immediately preceding the twelve-month period for which the rebate under this section is claimed.

(ii) "Qualified manufacturer" includes a person licensed under § 3-5-1201 et seq. or § 3-5-1401 et seq.

(B)(i) The maximum quantity of less than twenty-five thousand (25,000) barrels of beer and malt beverage shall be computed by combining all brands and labels of beer and malt beverage manufactured at all manufacturing facilities owned or controlled by the qualified manufacturer.

(ii)(a) The person shall validate its eligibility by furnishing copies of the following forms:

(1) Brewers Report of Operations (monthly or quarterly) TTB Form (OMB Number 1512-0052); or

(2) Its equivalent form as submitted to the United States Department of Treasury.

(b) The forms shall demonstrate that the combined manufactured barrels of beer and malt beverage are less than twenty-five thousand (25,000) barrels of beer; and

(5) "Wholesaler" means a person licensed by the Alcoholic Beverage Control Division as a wholesaler that purchases beer or malt beverage from a qualified manufacturer.

(b)(1)(A) A qualified manufacturer is entitled to a tax rebate equal to seven dollars and fifty cents (\$7.50) per barrel of beer or malt beverage sold or offered for sale in Arkansas each calendar year by

the qualified manufacturer or sold through its appointed wholesalers, if the qualified manufacturer or its wholesaler is required to report and pay tax under § 3-7-104(6) or § 3-5-1408(3) or § 3-7-104 on the beer or malt beverage first sold or offered for sale in this state.

(B) The tax rebate claimed each year by the qualified manufacturer under this section shall not exceed the annual tax liability of the qualified manufacturer and its wholesalers under § 3-5-1408(3) or § 3-7-104 during the year requested.

(2) The first twelve-month period for which a qualified manufacturer may claim a rebate under this section begins January 1, 2007, for the year ending December 31, 2006.

History. Acts 2007, No. 1203, § 1.

SUBCHAPTER 2 — SPECIAL RETAIL TAX

SECTION.

3-7-201. Tax imposed — Collection.

3-7-202. Lien — Procedure for obtaining.

3-7-203. Lien — Execution.

SECTION.

3-7-204. Alternative remedies.

3-7-205. Disposition of funds.

Effective Dates. Acts 1951, No. 252, § 4: approved Mar. 19, 1951. Emergency clause provided: “It has been found and is hereby declared by the General Assembly of the State of Arkansas that the collection of state general revenues during the current fiscal year has diminished to such extent that the activities of certain necessary agencies of the State Government are being and will continue to be curtailed, and that only the provisions of this act will correct a situation which otherwise will deprive the citizens of this state from receiving benefits which the operation of State Government contemplates. Therefore, an emergency is hereby declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall take effect and be in full force from and after its passage.”

Acts 1957, No. 410, § 2: Mar. 28, 1957. Emergency clause provided: “Whereas an efficient method should be provided for the collection of 3% excise tax set forth in Act 252 of 1951 and Act 118 of 1953, (Section 48-411, Ark. Stat. Official Edition) and it being essential that such collection be sufficient to supply the funds for the proper operation of the State Government, it being necessary for the public peace, welfare, and safety, an emergency is hereby declared and this act shall be in

full force and effect immediately after its passage and approval.”

Acts 2003, No. 272, § 2: Feb. 28, 2003. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the excise tax on beer levied under Arkansas Code § 3-7-201(a)(3) will expire; that Arkansas Code § 3-7-201(a)(3) should be extended until June 30, 2005, to ensure that low-income families may continue to receive quality early care and education, and to support the Arkansas Better Chance Program of the Department of Education; that the stream of special revenue should be continued; and that this act is immediately necessary to prevent the tax from expiring by operation of law. Therefore, an emergency is declared to exist and this act, being immediately necessary for the preservation of the public peace, health, and safety, shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2005, No. 2188, § 2: June 30, 2005. Emergency clause provided: “It is found

and determined by the General Assembly of the State of Arkansas that the current retail beer tax will expire on June 30, 2005; that in order to eliminate a period of time in which the retail beer tax would not exist this act must become effective on June 30, 2005; that the citizens of Arkansas are in need of the revenues generated by the retail beer tax; and that these revenues are necessary to continue funding essential programs such as subsidized child care for low-income families, the Arkansas Better Chance Program of the Department of Education, and the Child Care Development Fund. Therefore, an emergency is declared to exist and this act

being necessary for the preservation of the public peace, health, and safety shall become effective on June 30, 2005."

Acts 2007, No. 869, § 2: July 1, 2007. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the current excise tax on beer expires on June 30, 2007 and that in order to maintain continuity with the state fiscal year this act must become effective on July 1, 2007. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2007."

3-7-201. Tax imposed — Collection.

(a)(1) There is levied a special alcoholic beverage excise tax of three percent (3%) upon all retail receipts or proceeds derived from the sale of liquor, cordials, liqueurs, specialties, and sparkling and still wines. The tax shall be and is in addition to all other taxes now imposed and cumulative to the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq.

(2) Native wine sold at retail in this state shall be subject to the special alcoholic beverage excise tax levied upon all retail receipts or proceeds derived from the sale of liquor, cordials, liqueurs, specialties, and sparkling and still wines under the provisions of this section.

(3)(A) There is levied a special alcoholic beverage excise tax of three percent (3%) upon all retail receipts or proceeds derived from the sale of beer.

(B) The tax shall be in addition to all other taxes now imposed by the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq.

(b) It shall be the duty of every retailer in this state to collect the tax from the consumer in addition to the established retail price of beer, liquor, cordials, liqueurs, specialties, and sparkling and still wines and to file a return and remittance with the Director of the Department of Finance and Administration on or before the twentieth day of each calendar month for the preceding month.

(c) Failure to file the return and remittance on the due date shall be cause for the director to enter an assessment for the return and remittance and add as a penalty ten percent (10%) of the amount of tax found to be due.

(d) Returns shall be filed upon forms prescribed by the director in accordance with such regulations as the director may promulgate hereunder.

(e)(1) The revenues derived from the excise tax on beer levied under subdivision (a)(3) of this section shall be deposited in the Department of Human Services Grants Fund Account to be distributed as follows:

(A)(i) Twenty percent (20%) of the funds shall be used to provide subsidized child care for low-income families.

(ii) The low-income families shall not include families in the Transitional Employment Assistance Program; and

(B) Eighty percent (80%) of the funds shall be used to support and expand the Arkansas Better Chance Program of the Department of Human Services.

(2) On June 30 of any year, the balance of the funds derived from the excise tax on beer levied under subsection (a) of this section may be carried forward into the next fiscal year, there to be used for the same purposes.

(3)(A) The revenues derived from the excise tax on beer levied under subsection (a) of this section shall be supplementary to the Child Care Development Fund.

(B) These funds shall be exempt from budgetary cuts, reductions, or eliminations caused by a deficiency of general revenues.

(4)(A) The excise tax on beer levied under subdivision (a)(3) of this section shall not extend past June 30, 2007.

(B) After June 30, 2007, the State Board of Education and the Department of Education shall fully budget, fund, and expend or commit to expend the replacement general revenue in addition to any other funding provided by law for essential programs such as subsidized child care for low-income families, the Arkansas Better Chance Program, and the Child Care Development Fund in an amount equal to the appropriation level for the Better Chance Program.

(f)(1) Beginning July 1, 2007, there is levied a special alcoholic beverage excise tax of one percent (1%) upon all retail receipts or proceeds derived from the sale of beer.

(2) The revenues derived from the excise tax on beer levied under subdivision (f)(1) of this section shall be deposited into the General Revenue Fund Account of the State Apportionment Fund to be distributed as general revenue.

History. Acts 1951, No. 252, § 3; 1953, No. 118, § 32(D); 1985, No. 1052, § 3; A.S.A. 1947, §§ 48-411, 48-608.2; Acts 2001, No. 1841, § 1; 2003, No. 272, § 1; 2005, No. 2188, § 1; 2007, No. 869, § 1.

Amendments. The 2005 amendment

redesignated former (e)(4) as present (e)(4)(A); substituted "not extend past June 30, 2007" for "expire on June 30, 2005" in present (e)(4)(A); and added (e)(4)(B).

The 2007 amendment added (f).

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2003 Arkansas General As-

sembly, Alcoholic Beverages, 26 U. Ark. Little Rock L. Rev. 349.

CASE NOTES

Waiver.

Where purchaser of liquor store paid taxes known to be due from seller prior to sale, the state did not waive its right to enforce its claim for sales and special

excise tax deficiencies of seller discovered after transfer of the business to the new owner. *Commissioner of Revenues v. Belote*, 226 Ark. 295, 289 S.W.2d 665 (1956).

3-7-202. Lien — Procedure for obtaining.

(a) If the taxpayer fails to demand a hearing before the Director of the Department of Finance and Administration within twenty (20) days after an assessment of the tax due the state has been made under this subchapter or, if the taxpayer shall fail to pay the tax assessed by the director after a hearing and an order by the director establishing the tax, as hereinbefore provided, then the director may as soon as practicable thereafter issue to the circuit clerk of any county of the state a certificate certifying that the person therein named is indebted to the state for the tax established by the director to be due.

(b) The circuit clerk shall immediately enter upon the circuit court judgment docket the name of the delinquent taxpayer, the amount certified as being due, a short name of the tax, and the date of the entry upon the judgment docket.

(c) The entry shall have the same force and effect as an entry on the judgment docket of a judgment rendered by the circuit court of the county and shall constitute and be evidence of the state's lien upon the title to any interest in any real property of the taxpayer named in the certificate.

(d) The entry of the certificate as a judgment shall constitute, in addition to the force and effect above described, a lien also upon all personal property of the taxpayer named therein from the time of the entry of the certificate.

(e) The lien shall be in addition to any and all other liens existing in favor of the state to secure the payment of the unpaid tax, penalty, interest, and costs. The lien shall be paramount and superior to all other liens of whatever kind and character attaching to any of the property subsequent to the date of the entry upon judgment docket.

History. Acts 1957, No. 410, § 1; A.S.A. 1947, § 48-411.1.

3-7-203. Lien — Execution.

(a) On the entry of the certificate of the Director of the Department of Finance and Administration, the circuit clerk shall issue an execution directed to the sheriff of the county, commanding him or her to levy upon and against all real and personal property of the taxpayer, which execution shall be by the clerk placed in the hands of the sheriff for levying thereon. The director shall thereby have all the remedies and may take all the proceedings for the collection of the tax which may be had or taken upon the recovery of a judgment at law.

(b) The execution shall be issued and be served or executed in the same manner as now provided for the issuance and service of executions upon judgments rendered by the circuit courts of this state.

(c) The circuit clerks and the sheriffs shall be entitled to receive the same fees now provided for by law in such matters. The fees shall be collected from the taxpayer by the sheriff in addition to the tax, penalties, and interest included in the certificate of indebtedness.

(d) However, in the event the sheriff is unable, after diligent effort, to effect collection of the tax, interest, penalties, and costs, the director shall be empowered and authorized to pay such fees as are properly shown to be due to the clerk and sheriff out of the Miscellaneous Tax Refund Account.

History. Acts 1957, No. 410, § 1; A.S.A. 1947, § 48-411.1.

3-7-204. Alternative remedies.

Nothing in this subchapter shall preclude the Director of the Department of Finance and Administration from resorting to any other legal means of collecting taxes as may now be provided by law. The issuance of a certificate of indebtedness, the entry thereof by the clerk, and the levy of execution, as provided herein, shall not constitute an election of remedies in respect to the collection of the tax.

History. Acts 1957, No. 410, § 1; A.S.A. 1947, § 48-411.1.

3-7-205. Disposition of funds.

All taxes, interest, penalties, and costs received by the Director of the Department of Finance and Administration under the provisions of this subchapter shall be general revenues and shall be deposited in the State Treasury to the credit of the State Apportionment Fund. The Treasurer of State shall allocate and transfer the revenues to the various State Treasury funds participating in general revenues in the respective proportions to each as provided by and to be used for the respective purposes set forth in the Revenue Stabilization Law, § 19-5-101 et seq.

History. Acts 1951, No. 252, § 3; 1953, No. 118, § 32(D); A.S.A. 1947, § 48-411.

SUBCHAPTER 3 — PAYMENT BY WHOLESALERS AND IMPORTERS

SECTION.

3-7-301. Due date.

3-7-302. Monthly report and payment.

3-7-303. Records — Penalties.

SECTION.

3-7-304. Delinquent tax penalties.

3-7-305. [Repealed.]

3-7-306. Right to contract.

SECTION.

3-7-307. Rules and regulations — Sales to the military.

Effective Dates. Acts 1971, No. 296, § 12: July 1, 1971.

3-7-301. Due date.

Each licensed wholesale distributor and importer of spirituous liquors shall pay the excise tax required by law on the beverages on or before the fifteenth day of the month following the calendar month in which they are first received within this state by the wholesale distributor and importer.

History. Acts 1971, No. 296, § 2; A.S.A. 1947, § 48-423.

3-7-302. Monthly report and payment.

(a) Each licensee responsible for the payment of excise tax shall file on or before the fifteenth day of each month a verified report on forms provided by the Director of the Department of Finance and Administration showing, for the preceding calendar month, the exact quantity of spirituous liquor:

- (1) Constituting the beginning and ending inventory for the month;
- (2) Shipped to him or her from outside this state and received by him or her in this state;
- (3) Sold or disposed of by him or her in this state;
- (4) Sold by him or her in this state to an agency of the armed forces of the United States, to which sale the excise tax is not applicable and for which the wholesaler would be entitled to credit for taxes previously paid; and
- (5) Returned to the manufacturer, to which transfer the excise tax is not applicable and for which the wholesaler would be entitled to credit for taxes previously paid.

(b) The report on forms prescribed by the director shall also show the amount of excise tax payable after allowance for all proper deductions for all spirituous liquors received by him or her in this state and shall include such additional information as the director may require for the proper administration of this subchapter.

(c) Payment of the excise tax levied by law in the amount disclosed by the report shall accompany the report and shall be paid to the director.

History. Acts 1971, No. 296, § 3; A.S.A. 1947, § 48-424.

3-7-303. Records — Penalties.

(a) Each wholesale distributor and importer of spirituous liquors required to file a return shall keep such complete and accurate books, papers, invoices, and other records as may be necessary to substantiate the accuracy of his or her report and the amount of excise tax due and shall retain the records for not less than three (3) years, subject to the use and inspection of the Director of the Department of Finance and Administration or his or her agents.

(b) Any person required by this subchapter to retain books, papers, invoices, and other records who fails to produce them upon demand by the director or his or her agent or agents of the Alcoholic Beverage Control Division or its successor agency, unless the failure to produce is due to providential or other causes beyond his or her control, shall be guilty of a Class A misdemeanor.

History. Acts 1971, No. 296, §§ 3, 4; A.S.A. 1947, §§ 48-424, 48-425; Acts 2005, No. 1994, § 335.

Amendments. The 2005 amendment inserted “or her” twice in (a) and (b); and, in (b), inserted “Class A” and deleted “and upon conviction shall be fined not more

than one thousand dollars (\$1,000) or imprisoned not more than thirty (30) days, or punished by both the fine and imprisonment, in the discretion of the court” from the end.

Cross References. Misdemeanors, § 5-1-107.

3-7-304. Delinquent tax penalties.

(a) If the excise tax due the State of Arkansas is not paid when due by the wholesale distributor or importer of spirituous liquors responsible therefor, there shall be added to the amount of the tax a penalty on unpaid excise tax equivalent to five percent (5%) thereof.

(b) If the delinquency continues for more than thirty (30) days, the licensee or permittee shall be subject to the revocation or suspension of his or her permit, in addition to recovery of the taxes or penalty through his or her bond.

History. Acts 1971, No. 296, § 6; A.S.A. 1947, § 48-427.

suspension procedure generally, §§ 3-2-212 — 3-2-217.

Cross References. Revocation and

3-7-305. [Repealed.]

Publisher's Notes. This section, concerning bonds of wholesale distributors and importers of spirituous liquors, was repealed by Acts 1991, No. 261, § 1. The section was derived from Acts 1971, No. 296, § 8; A.S.A. 1947, § 48-429.

Acts 1991, No. 261, § 2, provided that: “It is the intent of this act to repeal the

current requirement that alcoholic beverage wholesalers post tax surety bonds with the Department of Finance and Administration, or with Divisions thereof. Therefore, all laws and administrative regulations in conflict with this act are hereby repealed.”

3-7-306. Right to contract.

To strengthen enforcement of this subchapter, the wholesalers, importers, manufacturers, and suppliers to whom this subchapter is applicable shall have the right to contract with each other to provide a distribution system best adapted, under proper regulations, to ensure payment of the taxes provided by law and to minimize the possibility of tax loss to this state.

History. Acts 1971, No. 296, § 9; A.S.A. 1947, § 48-430.

3-7-307. Rules and regulations — Sales to the military.

The Director of the Department of Finance and Administration shall continue the present, and if necessary promulgate additional, rules and regulations to relieve wholesale distributors and importers from the liability of paying the excise tax levied and imposed on beverages covered by this subchapter which are sold to agencies of the armed forces of the United States.

History. Acts 1971, No. 296, § 5; A.S.A. 1947, § 48-426.

SUBCHAPTER 4 — BEER**SECTION.**

3-7-401. Reports and payments.
3-7-402. [Repealed.]

SECTION.

3-7-403. Penalty for noncompliance.
3-7-404. Rules and regulations.

Effective Dates. Acts 1953, No. 179, § 5: approved Mar. 2, 1953. Emergency clause provided: "Whereas, a reporting method for paying excise tax on beer will reduce the cost of collecting such taxes; and, whereas, it is imperative that every possible step be taken to reduce the cost of State Government; now, therefore, this act being necessary for the preservation of the public peace, health, and safety, an emergency is hereby declared to exist and this act shall be in full force and effect from and after its passage."

Acts 1953, No. 373, § 5: approved Mar. 28, 1953. Emergency clause provided:

"Whereas, it is necessary for the Revenue Commissioner to have full authority to collect the revenues derived from the excise tax on beer; and whereas, it is necessary for the rules and regulations required by Acts 1953, No. 179 to be promulgated by the Revenue Commissioner; now therefore, an emergency is hereby deemed to exist and this act being necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after its passage."

3-7-401. Reports and payments.

(a) The Director of the Alcoholic Beverage Control Division is authorized and directed to adopt and issue rules and regulations to protect

the revenue of this state, prescribing a reporting method for paying and collecting the excise tax on beer.

(b) The rules and regulations shall require the reports to be filed with the Alcoholic Beverage Control Division on or before the fifteenth day of the month following the month in which the wholesaler acquired possession of or title to the beer.

(c) The reports required by the regulations shall be in lieu of those provisions of § 3-7-106 relating to the necessity to obtain transportation permits for beer.

(d) The reporting method and payment thereunder, within the time prescribed by this section and in the manner prescribed by the director, shall constitute a compliance as to sale, purchase, import, warehousing, transporting, and handling of beer, the transportation of beer in this state, and the obtaining of a permit prior to the transportation of beer into this state pursuant to § 3-7-106.

History. Acts 1953, No. 179, § 2; A.S.A. 1947, § 48-413.

3-7-402. [Repealed.]

Publisher's Notes. This section, concerning bonds of wholesalers, was repealed by Acts 1991, No. 261, § 1. The section was derived from Acts 1953, No. 179, § 2; A.S.A. 1947, § 48-413.

Acts 1991, No. 261, § 2, provided that: "It is the intent of this act to repeal the

current requirement that alcoholic beverage wholesalers post tax surety bonds with the Department of Finance and Administration, or with Divisions thereof. Therefore, all laws and administrative regulations in conflict with this act are hereby repealed."

3-7-403. Penalty for noncompliance.

(a) If any licensee or permittee fails to file a report on the fifteenth day of each month as provided in § 3-7-401, the sum of five dollars (\$5.00) for each day the licensee or permittee is in default shall be added to and become a part of the tax as an additional tax.

(b) If any licensee or permittee fails to pay the excise tax within the time prescribed for payment by the Alcoholic Beverage Control Board, a penalty of five percent (5%) of the amount of the excise due shall be added to the tax.

History. Acts 1953, No. 179, § 3; A.S.A. 1947, § 48-414.

3-7-404. Rules and regulations.

(a) The rules and regulations required by § 3-7-401 pertaining to a reporting method for paying and collecting excise tax on beer shall be adopted and promulgated by the Director of the Department of Finance and Administration.

(b) The rules and regulations shall be jointly enforced by both the Director of the Department of Finance and Administration and the Alcoholic Beverage Control Board.

(c) The Director of the Alcoholic Beverage Control Division shall have authority to promulgate rules and regulations pertaining to the possession, transportation, or importation of beer into the State of Arkansas.

(d) The express purpose of this section is to carry out the intention of §§ 3-7-401 — 3-7-403 to provide authority for protecting the state against loss of revenues derived from the levy of the excise tax on beer. The Director of the Department of Finance and Administration shall have full authority to adopt whatever rules and regulations he or she may deem necessary to this end.

History. Acts 1953, No. 373, §§ 1-3; Control Division, powers and duties, § 3-2-205.
A.S.A. 1947, §§ 48-415 — 48-417.

Cross References. Alcoholic Beverage

SUBCHAPTER 5 — WINE

SECTION.

3-7-501. Rules and regulations generally.
3-7-502. Reports and payment.
3-7-503. [Repealed.]

SECTION.

3-7-504. Penalties for noncompliance.
3-7-505. Joint enforcement.
3-7-506. Native wines.

Cross References. Wine, tax rate, § 3-7-104.

Effective Dates. Acts 1969, No. 271, § 7: Mar. 18, 1969. Emergency clause provided: "It is hereby found and determined by the General Assembly that the alcoholic beverage laws of this state are not being adequately enforced; that there is a pressing need for additional personnel for the proper enforcement of these laws; and that only by the immediate passage of this

act can the additional revenues be raised to employ the necessary additional personnel to properly enforce the alcoholic beverage laws of this state. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety shall become effective from and after the passage and approval of this act."

3-7-501. Rules and regulations generally.

(a) The Director of the Department of Finance and Administration is authorized and directed to adopt and issue rules and regulations to protect the revenues of this state by prescribing a reporting method for paying and collecting the tax on wines.

(b) Regulations shall provide a method of tax credit for wines sold to United States military installations or returned to the manufacturer, on which excise taxes are not required.

(c) There will be no change in the present system of reporting the tax on native Arkansas wines.

History. Acts 1971, No. 310, §§ 2-4; A.S.A. 1947, §§ 48-432 — 48-434.

3-7-502. Reports and payment.

The rules and regulations shall require reports to be filed with the Director of the Department of Finance and Administration on or before the fifteenth day of the month following the month in which the wholesaler or importer of wines shall obtain delivery of wines from the supplier. The tax due shall accompany this report.

History. Acts 1971, No. 310, § 2; A.S.A. 1947, § 48-432.

3-7-503. [Repealed.]

Publisher's Notes. This section, concerning bonds of wholesalers or importers of wine, was repealed by Acts 1991, No. 261, § 1. The section was derived from Acts 1971, No. 310, § 2; A.S.A. 1947, § 48-432.

Acts 1991, No. 261, § 2, provided that: "It is the intent of this act to repeal the

current requirement that alcoholic beverage wholesalers post tax surety bonds with the Department of Finance and Administration, or with Divisions thereof. Therefore, all laws and administrative regulations in conflict with this act are hereby repealed."

3-7-504. Penalties for noncompliance.

(a) If any licensee or permittee shall fail to file the report and pay the taxes required by § 3-7-502 within the time provided herein, a penalty of five percent (5%) shall be added to the tax.

(b) If the delinquency continues for more than thirty (30) days, the licensee or permittee shall be subject to the revocation or suspension of his or her permit, in addition to recovery of the taxes and penalty through his or her bond.

History. Acts 1971, No. 310, § 5; A.S.A. 1947, § 48-435.

Cross References. Revocation and

suspension procedure generally, §§ 3-2-212 — 3-2-217.

3-7-505. Joint enforcement.

The Director of the Department of Finance and Administration and the Alcoholic Beverage Control Division or its successor agency shall jointly enforce the provisions of this subchapter.

History. Acts 1971, No. 310, § 6; A.S.A. 1947, § 48-436.

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Stafford, *dicial Power and Legislative Power*, 7 U. Ark. Little Rock L.J. 279.
Separation of Powers and Arkansas Administrative Agencies: Distinguishing Ju-

3-7-506. Native wines.

(a) All producers and manufacturers of native Arkansas wine shall report monthly on all sales made in Arkansas to Arkansas wholesalers, retailers, or consumers and shall remit the gallonage tax provided by law with the report. However, wine manufactured in Arkansas for export from the state shall not be subject to the gallonage tax upon domestic wine.

(b) It shall not be necessary for producers or manufacturers to affix a tax stamp to individual bottles or containers, but they must indicate on the manufacturer's label on each bottle or container in an appropriate manner that the gallonage tax thereon has been paid.

(c) All such gallonage tax shall continue to be general revenues and shall be deposited in the State Treasury and shall be credited to the respective funds and used for the respective purposes provided in the Revenue Stabilization Law, § 19-5-101 et seq.

History. Acts 1969, No. 271, §§ 3, 4;
A.S.A. 1947, §§ 48-420, 48-421.

CHAPTER 8

LOCAL OPTION

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. PROCEEDINGS PURSUANT TO INITIATED ACT.
3. PROCEEDINGS PURSUANT TO 1935 ACT.
4. BEER AND LIGHT WINE.
5. PETITION FOR LOCAL OPTION ELECTIONS.

RESEARCH REFERENCES

Am. Jur. 45 Am. Jur. 2d, *Intox. L.*, § 79 et seq. **C.J.S.** 48 C.J.S., *Intox. L.*, § 49 et seq.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 3-8-101. When elections held.
3-8-102. Effect of dry vote — Retail dealers.

SECTION.

- 3-8-103. Effect of dry vote — Wholesalers and manufacturers.

Cross References. Enforcement of local option laws, § 3-3-301 et seq.

Effective Dates. Acts 1955, No. 15, § 4: Jan. 28, 1955. Emergency clause provided: "Whereas, under the present laws local option elections can be called and held at special elections; and, whereas these elections can be held on regular biennial general election days and thereby

save the counties the expense of these elections; now, therefore it is determined by the General Assembly that an emergency is hereby declared to exist, and this act being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

3-8-101. When elections held.

Local option elections to determine the legality or illegality of the manufacture, sale, bartering, loaning, or giving away of intoxicating liquors shall be held only on the regular biennial November general election days.

History. Acts 1955, No. 15, § 1; A.S.A. 1947, § 48-824.

CASE NOTES

Construction.

This section and Acts 1955, No. 15, § 2 (now see § 3-8-204(a)) prohibit special local option elections, but they do not repeal any part of Initiated Act No. 1 of 1942 or change local option elections into initiative acts. *Brown v. Davis*, 226 Ark. 843, 294 S.W.2d 481 (1956).

Cited: *Grubbs v. Rowland*, 226 Ark. 874, 296 S.W.2d 201 (1956); *Countz v. Roe*, 231 Ark. 108, 328 S.W.2d 353 (1959); *Armstrong v. Sturch*, 235 Ark. 571, 361 S.W.2d 77 (1962); *Glover v. Russell*, 260 Ark. 609, 542 S.W.2d 751 (1976).

3-8-102. Effect of dry vote — Retail dealers.

(a) Retail dealers in alcoholic beverages shall be allowed a period of sixty (60) days in which to dispose of stock after the final determination of the results of local option election by which the political subdivision in which the dealer is located shall have voted against the manufacture and sale of alcoholic beverages.

(b) During the sixty-day period defined in subsection (a) of this section, the retailer may not purchase any alcoholic beverages, but must restrict his or her business to the sale of those items on hand as of the date the election results are finally determined.

(c) As used in this section, "final determination" means the date of certification of the results of an uncontested election or, if contested, the date of the issuance of the mandate by the court finally determining an election contest.

History. Acts 1957, No. 212, §§ 1-3; A.S.A. 1947, §§ 48-826 — 48-828.

CASE NOTES

Contest of Election.

Under §§ 3-8-301 — 3-8-3113-8-310, 3-8-311 [repealed by Acts 2005, No. 1964], and 3-8-313 — 3-8-317, a contest of a local option election suspends the effective operation of the election, not only by the withholding of the certificate from the public records but also by the authorization of writs of supersedeas on appeal and there is nothing expressly or by implication in this section which repeals that

contest procedure. *Parker v. Hendriks*, 239 Ark. 667, 393 S.W.2d 251 (1965).

Where the period allowed for appeal from dismissal of local option election contest had not expired, there was no "final determination" and chancery court lacked jurisdiction to determine effects of the election during that period and would be prohibited from doing so. *Parker v. Rowan*, 239 Ark. 929, 395 S.W.2d 338 (1965).

3-8-103. Effect of dry vote — Wholesalers and manufacturers.

(a) It shall be lawful for any warehousing and office facility used by an authorized wholesaler of alcoholic beverages or manufacturing facility of a producer of native wines, or the manufacturing facility of a producer of beer, or the facilities of an alcoholic beverage distiller, blender, or rectifier, to continue in operation and to sell or give away, where previously authorized by law, such products in the facilities or existing restaurants appurtenant thereto, and utilized to promote the word-of-mouth advertising of such products, after the political subdivision in which such facility is located votes against the manufacture or sale of alcoholic beverages, provided that the facilities were in use or under construction for use prior to the filing of the petitions for local option election.

(b) Sales from the establishment shall be limited to sales to authorized retailers or native wine wholesalers for resale in areas where the sale of alcoholic beverages is lawful.

History. Acts 1961, No. 206, §§ 1, 2; 1965, No. 492, § 1; 1979, No. 145, § 1; 1979, No. 1056, § 1; A.S.A. 1947, §§ 48-829, 48-830.

Publisher's Notes. Acts 1979, No. 1056, § 2, provided that § 1 of that act was amendatory to Initiated Act No. 1 of 1942, to the extent of permitting manufacturing facilities used to produce native wines or beer or to distill, blend, or rectify alcoholic beverages to continue to manufacture these products and to sell or serve

the products produced at the facility to customers in any restaurant or other eating facility located on the premises in the event that the facility is located in an area which is voted dry in a local option election. However, the section further provided that this permission to continue business extended only to those facilities where the sale or service of the products was engaged in by the manufacturer at the time the initiated petitions calling for the local option election were filed.

SUBCHAPTER 2 — PROCEEDINGS PURSUANT TO INITIATED ACT

SECTION.

3-8-201. Definition.

3-8-202. Sections 3-8-201 — 3-8-203, 3-8-205 — 3-8-209 cumulative
— Construction.

SECTION.

3-8-203. Applicability of §§ 3-8-201 —
3-8-203, 3-8-205 —
3-8-209.

3-8-204. Petition procedure.

SECTION.

3-8-205. Determination of sufficiency of petition — Calling of election.

3-8-206. Conduct of election.

3-8-207. Mandamus of county officials.

3-8-208. Election results — Effects.

SECTION.

3-8-209. Sales or furnishing place for sale in dry territory prohibited — Penalty.

3-8-210. Authority to continue to issue sale permits.

Publisher's Notes. Initiated Act No. 1 of 1942 established a procedure for initiating and conducting local option elections which was different from that established in Acts 1935, No. 108, Art. 7. Section 6 of the 1942 act specifically provided that the act was cumulative to the liquor laws then in force in the state.

Section 3-8-204 provides, in part, that every petition for a local option election shall be prepared in accordance with Initiated Act No. 1 of 1942 and that such petitions shall be filed and all subsequent proceedings upon them shall be in accordance with Ark. Const., Amend. 7, regarding initiatives and referendums and with the amendment's enabling acts.

Subsequent to the enactment of § 3-8-204, one section of Acts 1935, No. 108, Art. 7, was amended by Acts 1983, No. 418. It is, therefore, unclear whether certain of the provisions of Acts 1935, No. 108, Art. 7, are superseded to the extent they conflict with Initiated Act No. 1 of 1942 or Ark. Const., Amend. 7, and its enabling acts.

Cross References. Dry territories, § 3-3-301 et seq.

Effective Dates. Init. Meas. 1942, No. 1, § 8, Acts 1943, p. 998: Jan. 1, 1943.

Acts 1993, No. 826, § 5: Apr. 1, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly that prior to the effective date of Act 418 of 1983, county clerks were not required by law to officially notify the Alcoholic Beverage Control Division of the results of local option contests; thus, the Alcoholic Beverage Control Division was required to rely upon unofficial information prior to the effective date of Act 418 of 1983; that immediate passage of this act is necessary to eliminate confusion regarding permits issued by the Alcoholic Beverage Control Division. Therefore, an emergency is declared to exist and this act, being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effective from and after the date of its passage and approval."

CASE NOTES

ANALYSIS

Constitutionality.

In General.

Failed Amendment.

Implied Repeals.

Local Option Elections.

Constitutionality.

Sections 3-8-201 — 3-8-203 and 3-8-205 — 3-8-209 are not an unconstitutional delegation of executive or legislative authority to the judiciary. *Yarbrough v. Beardon*, 206 Ark. 553, 177 S.W.2d 38 (1944).

Sections 3-8-201 — 3-8-203 and 3-8-205 — 3-8-209 were not violative of the due process clause of the federal Constitution in that they make no provision for notice

to interested parties so that they may appear and be heard, since sale of intoxicating liquors is a mere license or privilege granted by the state. *Yarbrough v. Beardon*, 206 Ark. 553, 177 S.W.2d 38 (1944).

Sections 3-8-201 — 3-8-203 and 3-8-205 — 3-8-209 are not unconstitutional against contention that they were adopted when many electors were in the armed forces. *Lienhart v. Burton*, 207 Ark. 536, 181 S.W.2d 468 (1944).

In General.

Section 3-9-201 et seq. does not, either expressly, by implication, or by operable effect, amend or violate this subchapter. *Morris v. Torch Club, Inc.*, 295 Ark. 461, 749 S.W.2d 319 (1988).

Failed Amendment.

Acts 1957, No. 359 did not receive the required two-thirds vote of all elected members of each house to amend Initiated Act No. 1 of 1942 so as to allow a municipality in a dry county to have a separate vote on the sale of beer in such municipality. *Carter v. Reamey*, 232 Ark. 211, 335 S.W.2d 298 (1960).

Implied Repeals.

Subchapter 3 of this chapter was not impliedly repealed by §§ 3-8-201 — 3-8-203 and 3-8-205 — 3-8-209. *Hedrick v. Hickman*, 225 Ark. 273, 280 S.W.2d 406 (1955).

Section 3-8-101 and Acts 1955, No. 15, § 2 (now see § 3-8-204(a)) prohibits special local option elections but do not repeal any part of Initiated Act No. 1 of 1942 or change local option elections into initiative acts. *Brown v. Davis*, 226 Ark. 843, 294 S.W.2d 481 (1956).

Local Option Elections.

Local liquor option elections are in the nature of referendum measures not initiated measures within the meaning of Ark. Const. Amend. 7. *Brown v. Davis*, 226 Ark. 843, 294 S.W.2d 481 (1956).

3-8-201. Definition.

As used in this subchapter, unless the context otherwise requires, "intoxicating liquor" includes any beverage containing more than one-half of one percent (0.5%) of alcohol by weight.

History. Init. Meas. 1942, No. 1, § 2, Acts 1943, p. 998; A.S.A. 1947, § 48-802.

CASE NOTES**Beer.**

Sale of beer containing not more than 5% alcohol by weight in territory voting dry under this subchapter is a violation of § 3-3-208. *Joy v. State*, 211 Ark. 185, 199 S.W.2d 745 (1947).

Cited: *McCurry v. Wilson*, 226 Ark. 860, 294 S.W.2d 485 (1956); *Grubbs v.*

Rowland, 226 Ark. 874, 296 S.W.2d 201 (1956); *Baker v. Boone*, 230 Ark. 843, 327 S.W.2d 85 (1959); *Morris v. Torch Club*, 278 Ark. 285, 645 S.W.2d 938 (1983); *ABC Div. v. Barnett*, 285 Ark. 189, 685 S.W.2d 511 (1985); *E-Z Mart Stores, Inc. v. Kirksey*, 885 F.2d 476 (8th Cir. 1989).

3-8-202. Sections 3-8-201 — 3-8-203, 3-8-205 — 3-8-209 cumulative — Construction.

It is expressly declared that §§ 3-8-201 — 3-8-203 and 3-8-205 — 3-8-209 shall be cumulative to the liquor laws now in force in this state. These sections shall at all times be construed so as to permit, upon petition of fifteen percent (15%) of the qualified electors in any area to be affected, the qualified voters therein at one (1) election to determine whether or not all alcoholic beverages, including all kinds and types of whiskey, beer, and wine, shall be manufactured or sold, bartered, loaned, or given away therein.

History. Init. Meas. 1942, No. 1, § 6, Acts 1943, p. 998; A.S.A. 1947, § 48-806.

CASE NOTES

Cited: Taylor v. Spence, 224 Ark. 223, 272 S.W.2d 437 (1954); Hedrick v. Hickman, 225 Ark. 273, 280 S.W.2d 406 (1955).

3-8-203. Applicability of §§ 3-8-201 — 3-8-203, 3-8-205 — 3-8-209.

Nothing in §§ 3-8-201 — 3-8-203 and 3-8-205 — 3-8-209 is to be construed to affect manufacturers who sell their product exclusively to wholesalers.

History. Init. Meas. 1942, No. 1, § 2, Acts 1943, p. 998; Acts 1985, No. 266, § 2; A.S.A. 1947, § 48-802.

CASE NOTES

Cited: McCurry v. Wilson, 226 Ark. S.W.2d 85 (1959); Morris v. Torch Club, 860, 294 S.W.2d 485 (1956); Grubbs v. 278 Ark. 285, 645 S.W.2d 938 (1983); ABC Rowland, 226 Ark. 874, 296 S.W.2d 201 Div. v. Barnett, 285 Ark. 189, 685 S.W.2d (1956); Baker v. Boone, 230 Ark. 843, 327 511 (1985).

3-8-204. Petition procedure.

(a) Every petition for a local option election shall be prepared in accordance with Initiated Act No. 1 of 1942, §§ 3-8-201 — 3-8-203 and 3-8-205 — 3-8-209, and it shall be filed and the subsequent proceedings thereupon shall be had and conducted in the manner provided for county initiated measures by Arkansas Constitution, Amendment 7, and enabling acts pertaining thereto.

(b) Every petition for a local option election under Initiated Act No. 1 of 1942, §§ 3-8-201 - 3-8-203 and 3-8-205 - 3-8-209, shall be prepared substantially in the form provided for initiative petitions in § 7-9-104, except that the petitions shall be directed to the county clerk instead of to the Secretary of State.

(c) All petitions shall have attached thereto the form of verification and shall be signed by the person circulating the petitions in the same form or manner as is provided in § 7-9-109.

(d) In all other respects, the petitions shall be circulated and sufficiency thereof shall be determined, and may be reviewed in the same manner and procedure, insofar as are applicable thereto, as provided in Acts 1935, No. 4 [repealed], for initiated county measures.

(e) Any person who is a qualified elector of the State of Arkansas and who is a resident and registered voter of the county, municipality, ward, precinct, or other defined area in which a local option election is being requested by petitions under Initiated Act No. 1 of 1942, §§ 3-8-201 — 3-8-203 and 3-8-205 — 3-8-209, may sign the local option petition in his or her own proper handwriting and not otherwise.

(f) A person shall be guilty of a Class A misdemeanor if that person:

(1) Signs any name other than his or her own to any petition;

(2) Knowingly signs his or her name more than once to any petition;

(3) Knowingly signs a petition when he or she is not legally entitled to sign a petition;

(4) Knowingly and falsely misrepresents the purpose and effect of the petition for the purpose of causing anyone to sign the petition.

(5) Acting in the capacity of canvasser, knowingly makes a false statement on a petition verification form; or

(6) Acting in the capacity of a notary, knowingly fails to witness a canvasser's affidavit either by witnessing the signing of the instrument and personally knowing the signer or being presented with proof of identity of the signer.

(g)(1) The provisions of this section are intended to be supplemental to Initiated Act No. 1 of 1942, §§ 3-8-201 — 3-8-203 and 3-8-205 — 3-8-209, and to establish reasonable and necessary provisions for providing safeguards in the form of petitions and the circulation thereof and to prohibit unauthorized persons from signing the petitions.

(2) Therefore, the provisions of this section shall be deemed to repeal only such parts of the Initiated Act No. 1 of 1942, §§ 3-8-201 - 3-8-203 and 3-8-205 - 3-8-209 as may be specifically inconsistent herewith.

History. Acts 1977, No. 341, §§ 1-3; A.S.A. 1947, §§ 48-801.1 — 48-801.3; Acts 1997, No. 449, § 1.

Cross References. Misdemeanors, fines and imprisonment, §§ 5-4-201, 5-4-401.

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Heller and Sallings, Survey of Public Law, 3 U. Ark. Little Rock L.J. 296.

CASE NOTES

ANALYSIS

Sufficiency of Petition.
Time of Filing Petitions.

Sufficiency of Petition.

A petition for a local liquor option election under this subchapter is prepared in accordance with this subchapter and filed with the county clerk thereafter. In order to get the question on the ballot at the regular biennial November general election, the petition shall be handled in the same manner and according to the procedure as if it were in fact a county initiative measure. *Brown v. Davis*, 226 Ark. 843, 294 S.W.2d 481 (1956) (decision under prior law). But see *Glover v. Russell*, 260 Ark. 609, 542 S.W.2d 751 (1976).

Chancery court had no jurisdiction to review sufficiency of petitions. *McFerrin v. Knight*, 265 Ark. 658, 580 S.W.2d 463 (1979).

Time of Filing Petitions.

Suit against county clerk and county board of election commissioners to compel certification of petitions for local option election which were filed more than 90 days before the election to be held in November should prevail since the initiative and referendum amendment to the Arkansas Constitution does not control the time within which a petition must be filed. *Armstrong v. Sturch*, 235 Ark. 571, 361 S.W.2d 77 (1962) (decision under prior law). But see *Glover v. Russell*, 260 Ark. 609, 542 S.W.2d 751 (1976).

In that Ark. Const. Amend. 7 provides that the time for filing an initiative petition shall not be fixed at less than 60 days before the election at which it is to be voted upon, a petition for a local option election which was filed 55 days before the November election was invalid. *Glover v. Russell*, 260 Ark. 609, 542 S.W.2d 751 (1976) (decision under prior law).

3-8-205. Determination of sufficiency of petition — Calling of election.

(a)(1) When thirty-eight percent (38%) of the qualified electors shall file petitions with the county clerk of any county within this state praying that an election be held in a designated county, township, municipality, ward, or precinct to determine whether or not licenses shall be granted for the manufacture or sale or the bartering, loaning, or giving away of intoxicating liquor within the designated territory, the county clerk within ten (10) days thereafter shall determine the sufficiency of the petition.

(2) The total number of voters registered as certified by the county clerk to the Secretary of State by the first of June of each year pursuant to Arkansas Constitution, Amendment 51 shall be the basis upon which the number of signatures of qualified electors on petitions shall be computed.

(3) A person shall be a registered voter at the time of signing the petition.

(b) If it is found that thirty-eight percent (38%) of the qualified electors have signed the petition, the county clerk shall certify that finding to the county board of election commissioners, and the question shall be placed on the ballot in the county, township, municipality, ward, or precinct at the next biennial general election as provided in § 3-8-101.

(c)(1) If an appeal is taken from the certification of the county clerk, it shall be taken within ten (10) days and shall be considered by the circuit court within ten (10) days, or as soon as practicable, after the appeal is lodged with the court.

(2) The circuit court shall render its decision within thirty (30) days thereafter.

(d) If an appeal is taken, the election shall be had no sooner than sixty-five (65) days after the appeal is determined, if the decision is in favor of the petitioners.

(e)(1)(A) The decision shall be certified immediately to the county board of election commissioners, and the day for the election shall be fixed by the county board of election commissioners for not earlier than sixty-five (65) days nor later than ninety (90) days after the certification of the decision of the circuit court.

(B) Any appeal from the final decision of the circuit court shall be taken within ten (10) days and shall be advanced and immediately determined by the Supreme Court.

(2) In that event, the county board of election commissioners may, in its discretion, delay the election until after the final decision of the Supreme Court.

(3) If the decision is in favor of the petitioners, then the county board of election commissioners shall set the day for the election, which shall be not earlier than sixty-five (65) days nor later than ninety (90) days after the final decision of the Supreme Court.

History. Init. Meas. 1942, No. 1, §§ 1, 4, Acts 1943, p. 998; Acts 1985, No. 266, § 1; A.S.A. 1947, §§ 48-801, 48-804; Acts 1993, No. 243, § 1; 1997, No. 449, § 2; 1999, No. 637, § 1; 2007, No. 1049, § 2.

Amendments. The 2007 amendment

substituted "no sooner than sixty-five (65)" for "within thirty (30)" in (d); and in (e), substituted "sixty-five (65)" for "twenty (20)" and "ninety (90)" for "thirty (30)" in (1)(A) and (3).

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Heller and Sallings, Survey of Public Law, 3 U. Ark. Little Rock L.J. 296.

CASE NOTES

ANALYSIS

In General.

Appeals.

Disqualification of Court.

Local Option Elections.

Petition.

—Certification.

—Signatures.

—Sufficiency.

Time of Elections.

In General.

Proceeding for calling an election does not partake of the nature of an adversary proceeding such as is involved in an ordinary law suit but merely provides a method to determine the sentiment of the voters on the liquor question. *Gocio v. Harkey*, 211 Ark. 410, 200 S.W.2d 977 (1947).

Appeals.

Filing of motion to set aside order of county court calling a local option election in a township would neither interrupt nor toll the time allowed for appeal. *Van Gundy v. Caudle*, 206 Ark. 781, 177 S.W.2d 740 (1944).

Neither certiorari nor prohibition were proper writs to review order of county court calling a local option election, and filing of notice to apply for certiorari and prohibition would not extend time for taking appeal. *Van Gundy v. Caudle*, 206 Ark. 781, 177 S.W.2d 740 (1944).

The 10 day appeal period allowed by the statute is not unreasonable nor is it an infringement on due process of law. *Covington v. Shackelford*, 222 Ark. 374, 259 S.W.2d 676 (1953).

An appeal from a county court order for a local option election is not timely where

filed more than 10 days after the judgment becomes final. *Covington v. Shackelford*, 222 Ark. 374, 259 S.W.2d 676 (1953).

The requirement of this section that an appeal be filed within 10 days with regard to the sufficiency of the number of signatures on a petition on a local option issue is not superseded by the 30-day period for an appeal contained in Rule 4(a) of the Rules of Appellate Procedure — Civil. *Citizens for a Safer Carroll County v. Epley*, 338 Ark. 61, 991 S.W.2d 562 (1999).

Disqualification of Court.

Where county judge and relatives within fourth degree of consanguinity sign petition for local option, remonstrators waive disqualification of the court under the constitutional provisions prohibiting any judge from presiding over a trial in which he is interested, if they proceed to trial without filing a motion for disqualification of the court. *Nowlin v. Kreis*, 213 Ark. 1027, 214 S.W.2d 221 (1948).

Local Option Elections.

Local liquor option elections are in the nature of referendum measures not initiated measures within the meaning of Ark. Const., Amend. 7. *Brown v. Davis*, 226 Ark. 843, 294 S.W.2d 481 (1956).

Petition.

—Certification.

Suit against county clerk and county board of election commissioners to compel certification of petitions for local option election which were filed more than 90 days before the election to be held in November should prevail since the initiative and referendum amendment to the Arkansas Constitution did not control the time within which petitions must be filed.

Armstrong v. Sturch, 235 Ark. 571, 361 S.W.2d 77 (1962). But see *Glover v. Russell*, 260 Ark. 609, 542 S.W.2d 751 (1976).

—Signatures.

Written verification by the canvasser is not the only way of establishing the fact of signing. *Tollett v. Knod*, 210 Ark. 781, 197 S.W.2d 744 (1946).

—Sufficiency.

Failure of signers of a local option election petition for a township to state their voting precinct was not a fatal defect where the township was not so large as to create doubt as to each signer's identity, and since there is no provision requiring signers to state their voting precincts. *Taylor v. Spence*, 224 Ark. 223, 272 S.W.2d 437 (1954).

Procedural deficiencies by the county clerk upon the proper filing of a local liquor option petition are not fatal when there is yet time in which the clerk may correct such deficiencies. *Brown v. Davis*, 226 Ark. 843, 294 S.W.2d 481 (1956).

A local liquor option petition is sufficient if it complies with this section and need not be in the form of an initiated county measure. *McCurry v. Wilson*, 226 Ark. 860, 294 S.W.2d 485 (1956).

Where local option election petition poses an issue on having hard liquor or complete prohibition in a county already committed to modified prohibition allowing sale of beer and light wines, it is not invalid because it offers no opportunity to vote for the current modified prohibition. *McCurry v. Wilson*, 226 Ark. 860, 294 S.W.2d 485 (1956).

Portion of petition setting out that it was "An act to legalize the manufacture, sale, bartering, lending, and giving away of intoxicating liquors within Bradley County, Arkansas," was invalid due to the fact that there is a general state law which governs the manufacture and sale of intoxicating liquors and a county may not pass a local law while a general law covering the same subject matter is in effect. *Grubbs v. Rowland*, 226 Ark. 874, 296 S.W.2d 201 (1956).

Variance in language of petition by use of the word "lending" where this section says "loaning" did not affect the legality of the petition. *Grubbs v. Rowland*, 226 Ark. 874, 296 S.W.2d 201 (1956).

The inadequacy of petitions for election was cured by the verifications of the petition circulator which were added to the signatures after the petitions were filed, and by the circulator's testimony at trial. *Lawson v. St. Francis County Election Comm'n*, 309 Ark. 135, 827 S.W.2d 159 (1992).

Time of Elections.

This section and § 3-8-206 purposely omitted requirement that election should not be held within 30 days preceding or following regular political election. *Mondier v. Medlock*, 207 Ark. 790, 182 S.W.2d 869 (1944).

Cited: *Eoff v. State*, 218 Ark. 109, 234 S.W.2d 521 (1950); *Glover v. Russell*, 260 Ark. 609, 542 S.W.2d 751 (1976); *Henard v. St. Francis Election Comm.*, 301 Ark. 459, 784 S.W.2d 598 (1990); *Reichenbach v. Serio*, 309 Ark. 274, 830 S.W.2d 847 (1992).

3-8-206. Conduct of election.

(a)(1) The county board of election commissioners of the particular county shall cause the question to be placed on the ballot at the general election in the following form:

[] FOR the Manufacture or Sale of Intoxicating Liquors

[] AGAINST the Manufacture or Sale of Intoxicating Liquors.

(2) Each elector shall be instructed on the ballot to vote FOR or AGAINST the question by placing an appropriate mark.

(b) The county board of election commissioners shall count the votes cast on the question of the manufacture and sale of alcoholic beverages in the designated area and shall deliver its certificate declaring the result of the election, together with the election returns, within three

(3) days after the date of the election, to the county clerk of the county.

(c) Upon petition of twenty-five (25) interested legal voters in the territory affected, within ten (10) days after the date of the election, the county board of election commissioners shall immediately recount the votes and declare the result of the election as determined by such recount.

(d) Within twenty (20) days after the election, the county court shall make and have entered of record its order declaring the result of the election.

(e) The costs of any elections held under the provisions of this subchapter shall be paid by the county in the same manner as other costs of general elections.

History. Init. Meas. 1942, No. 1, § 2, Acts 1943, p. 998; Acts 1985, No. 266, § 2; A.S.A. 1947, § 48-802; Acts 1997, No. 449, § 3.

Cross References. General election laws, § 7-1-101 et seq.

CASE NOTES

ANALYSIS

Certification of Results.
Contest.
Election Contests.
Failure to Open Polls.
Recount.
Time of Election.
Vote Count.

Certification of Results.

Certification of local option election returns by two commissioners instead of three, since one commissioner was away on personal business, did not invalidate certification. *Bonds v. Rogers*, 219 Ark. 319, 241 S.W.2d 371 (1951).

County court could not defeat the will of the voters by neglecting to timely declare the election results since the contestants were not prejudiced in any way by the court's neglect. *Countz v. Roe*, 231 Ark. 108, 328 S.W.2d 353 (1959).

Contest.

Where all of the alleged irregularities in local option liquor election contest were not sufficient to change the result of the election, the election would not be voided because of such alleged irregularities. *Baker v. Hedrick*, 225 Ark. 778, 285 S.W.2d 910 (1956).

Election Contests.

The county court has jurisdiction in contests of local option elections on the liquor question, and Acts 1955, No. 15, § 2

(superseded) did not have the effect of transferring such jurisdiction to the chancery court. *Ward v. Boone*, 231 Ark. 655, 331 S.W.2d 875 (1960) (decision prior to the enactment of § 3-8-204).

The complaint stated a cause of action where it alleged that the returns as certified show there was a majority of only 41 votes in favor of the manufacture and sale of intoxicating liquors; that the returns as canvassed and certified contained errors in the canvass from four townships, sufficient to overcome the 41 vote majority. *Ward v. Boone*, 231 Ark. 655, 331 S.W.2d 875 (1960) (decision prior to the enactment of § 3-8-204).

Failure to Open Polls.

Failure of one township in county-wide election on local option to open polls did not make election void where it was not shown that anyone was deprived of right to vote, or opening of polls was suppressed by force or fraud. *Bonds v. Rogers*, 219 Ark. 319, 241 S.W.2d 371 (1951).

Recount.

Absence of one commissioner during recount or appointment of another individual to assist in recount did not invalidate recount. *Bonds v. Rogers*, 219 Ark. 319, 241 S.W.2d 371 (1951).

Where the county election commissioners failed to recount the votes, even though contestants requested a recount in accordance with this section, contestants' remedy was by an action for mandamus

against the county election commissioners, not by using such failure as a ground to contest the election in the courts. *Countz v. Roe*, 231 Ark. 108, 328 S.W.2d 353 (1959).

Time of Election.

This section and § 3-8-205 purposely omitted requirement that election should not be held within 30 days preceding or following regular political election. *Mondier v. Medlock*, 207 Ark. 790, 182 S.W.2d 869 (1944).

Vote Count.

Provision regulating voting at local option election that "The election commissioners shall count the votes" means that commissioners shall canvass the result as is done in general elections. *Bonds v. Rogers*, 219 Ark. 319, 241 S.W.2d 371 (1951) (decision prior to 1985 amendment).

Counting of ballots by judges and clerks before forwarding same to county election commissioners was proper since this section governing local option election stipulates that election shall be conducted in conformity with general election law, which provides for counting by judges and clerks. *Bonds v. Rogers*, 219 Ark. 319, 241 S.W.2d 371 (1951) (decision prior to 1985 amendment).

Cited: *McCurry v. Wilson*, 226 Ark. 860, 294 S.W.2d 485 (1956); *Grubbs v. Rowland*, 226 Ark. 874, 296 S.W.2d 201 (1956); *Baker v. Boone*, 230 Ark. 843, 327 S.W.2d 85 (1959); *Morris v. Torch Club*, 278 Ark. 285, 645 S.W.2d 938 (1983); *ABC Div. v. Barnett*, 285 Ark. 189, 685 S.W.2d 511 (1985); *Doty v. Payne*, 337 Ark. 326, 989 S.W.2d 159 (1999).

3-8-207. Mandamus of county officials.

Upon petition of ten (10) interested legal voters in the territory affected, filed with the circuit clerk of the county in which proceedings are pending, the circuit court shall immediately by mandamus compel the county court or other officials to perform the duties imposed upon them under the provisions of this subchapter. The circuit court shall be open at all times for the purposes of this subchapter.

History. Init. Meas. 1942, No. 1, § 5, Acts 1943, p. 998; A.S.A. 1947, § 48-805.

CASE NOTES

ANALYSIS

Applicability.
Certification of Petition.
Recount.

Applicability.

This section is intended to apply to matters relating to local option elections, such as the petition for an election, its conduct, and the certification of its results, and not to a mandamus proceeding seeking to void and rescind permits granted to private clubs under Acts 1969, No. 132. *Kemp-Bradford VFW Post 4764 v. Wood*, 262 Ark. 168, 554 S.W.2d 344 (1977).

Certification of Petition.

Suit against county clerk and county board of election commissioners to compel

certification of petitions for local option election which were filed more than 90 days before the election to be held in November should prevail since the initiative and referendum amendment to the Arkansas Constitution had nothing to do with local option elections on the liquor question. *Armstrong v. Sturch*, 235 Ark. 571, 361 S.W.2d 77 (1962).

Recount.

Where the county election commissioners failed to recount the votes, even though contestants requested a recount in accordance with § 3-8-206, contestants' remedy was by an action for mandamus against the county election commissioners, not by using such failure as a ground to contest the election in the courts. *Countz v. Roe*, 231 Ark. 108, 328 S.W.2d 353 (1959).

3-8-208. Election results — Effects.

(a) If the majority of the electors voting on the issue at the election vote for the manufacture or sale of intoxicating liquors, then it shall be lawful for the Director of the Alcoholic Beverage Control Division to continue to issue licenses or permits for such manufacture or sale within the designated territory as if no election had been held.

(b) If a majority of the electors voting at the election vote against the manufacture or sale of intoxicating liquors, then it shall be unlawful for the Director of the Alcoholic Beverage Control Division or any county or municipal official to issue any license or permit for the manufacture, sale, barter, loan, or giving away of any intoxicating liquor as defined in this subchapter unless and until the prohibition shall be repealed by a majority vote as provided for in §§ 3-8-201 — 3-8-203 and 3-8-205 — 3-8-209.

(c) In either case, a period of at least four (4) years shall elapse before another election on the same subject may be held in the territory affected.

(d) If a majority of electors voting on the issue at any such election vote against the manufacture or sale of intoxicating liquors, any license or permit which has already been issued, authorizing the manufacturing or sale or the bartering, loaning, or giving away of intoxicating liquor within the territory affected shall be immediately cancelled, and the unearned part of the license or permit fee shall be returned. It shall then be unlawful for any person, firm, or corporation to manufacture, sell, barter, loan, or give away any intoxicating liquor within the territory covered by the petition.

History. Init. Meas. 1942, No. 1, § 2, Acts 1943, p. 998; Acts 1985, No. 266, § 2; A.S.A. 1947, § 48-802.

CASE NOTES**ANALYSIS**

Effect of Vote.

Election Laws.

Repeal of Prohibition.

Subsequent Elections.

Effect of Vote.

General state law which governs the manufacture and sale of intoxicating liquors is held in abeyance when a county votes dry and is reactivated when a county votes wet. *Grubbs v. Rowland*, 226 Ark. 874, 296 S.W.2d 201 (1956).

Election Laws.

General state law which governs the manufacture and sale of intoxicating liquors is held in abeyance when a county

votes dry and is reactivated when a county votes wet. *Grubbs v. Rowland*, 226 Ark. 874, 296 S.W.2d 201 (1956).

Repeal of Prohibition.

The words "the prohibition" in subsection (b) of this section must be construed to be the prohibition voted in the designated territory; consequently, where a county-wide prohibition exists, only a county-wide election can repeal the prohibition. *Denniston v. Riddle*, 210 Ark. 1039, 199 S.W.2d 308 (1947).

Subsequent Elections.

The county was not precluded from holding an election within two years from local option election held in one township in the county. *Yarbrough v. Beardon*, 206

Ark. 553, 177 S.W.2d 38 (1944) (decision prior to 1985 amendment).

Where the petition filed with the county court was sufficient to require an election on the liquor issue and the county as a whole voted dry, no subdivision of the county could thereafter have a separate vote on the liquor question. *Tabor v. O'Dell*, 212 Ark. 902, 208 S.W.2d 430 (1948).

When an entire county has voted dry there can be no election in a city in such county to permit the sale, and Acts 1957, No. 359, which was not passed by the necessary two-thirds vote, could not authorize the holding of such an election contrary to the provisions of this section.

Carter v. Reamey, 232 Ark. 211, 335 S.W.2d 298 (1960).

The interval of two (now four) years between local option elections required by this section superseded the three-year interval formerly required by Acts 1935, No. 108, Art. 7, § 12. *Jones v. Etheridge*, 242 Ark. 907, 416 S.W.2d 306 (1967) (decision prior to 1985 amendment).

Cited: *McCurry v. Wilson*, 226 Ark. 860, 294 S.W.2d 485 (1956); *Baker v. Boone*, 230 Ark. 843, 327 S.W.2d 85 (1959); *Morris v. Torch Club*, 278 Ark. 285, 645 S.W.2d 938 (1983); *ABC Div. v. Barnett*, 285 Ark. 189, 685 S.W.2d 511 (1985); *E-Z Mart Stores, Inc. v. Kirksey*, 885 F.2d 476 (8th Cir. 1989); *Bryant v. Ruff*, 303 Ark. 330, 798 S.W.2d 417 (1990).

3-8-209. Sales or furnishing place for sale in dry territory prohibited — Penalty.

(a) It shall be unlawful for any person, firm, or corporation to manufacture, sell, barter, loan, or give away intoxicating liquor in any county, township, municipality, ward, or precinct in which the manufacture or sale of intoxicating liquor is or shall be prohibited under the provisions of Initiated Act No. 1 of 1942, §§ 3-8-201 — 3-8-203 and 3-8-205 — 3-8-209.

(b)(1) Upon a first conviction, any person or officers of any firm or corporation that shall manufacture, sell, barter, loan, or give away any intoxicating liquor in any territory which has been made dry under the provisions of this subchapter shall be guilty of a violation and shall be fined not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000).

(2) For a second conviction, he or she shall be guilty of a violation and fined not less than two hundred dollars (\$200) nor more than two thousand dollars (\$2,000), and for any subsequent conviction shall be guilty of a Class D felony.

(c) Any person or officers of a firm or corporation that knowingly furnishes or rents a house, room, wagon, vehicle, or any conveyance or thing in which intoxicating liquor is manufactured or sold, bartered, loaned, or given away in violation of prohibition secured under the provisions of this subchapter is declared to be a *particeps criminis* and upon conviction shall be subject to the same punishment as the principal. The house, room, wagon, vehicle, conveyance, or other thing in which the intoxicating liquor is manufactured or sold, bartered, loaned, or given away shall be liable for all fines adjudged against either the principal or the *particeps criminis*, or both, as defined in this subsection.

History. Init. Meas. 1942, No. 1, § 3, Acts 1943, p. 998; A.S.A. 1947, § 48-803; Acts 2005, No. 1964, § 6; 2005, No. 1994, § 419.

A.C.R.C. Notes. Pursuant to § 1-2-207, this section is set out above as amended by Acts 2005, No. 1994. Subsection (b) of this section was also amended by Acts 2005, No. 1964, § 6, to read as follows: “(b) Any person who or officers of any firm or corporation which shall manufacture, sell, barter, loan, or give away any intoxicating liquor in any territory which has been made dry under the provisions of this subchapter shall, upon first conviction, be deemed guilty of a violation and shall be fined not less than four hundred dollars (\$400) or more than four thousand dollars (\$4,000). For a second conviction, he or she shall be fined not less than eight hundred dollars (\$800) or more than eight thousand dollars (\$8,000); and for any subsequent conviction shall be guilty of a felony and shall be sentenced to not less than one (1) year nor more than five (5) years in the Department of Corrections.”

Publisher's Notes. Acts 1993, No. 1258, § 5, provided: “Arkansas Code §§ 3-8-209, 3-8-311, 3-8-312, and 3-3-306 are repealed to the extent they conflict with this act.”

Amendments. The 2005 amendment, in (b), substituted “guilty of a violation” for “deemed guilty of a misdemeanor,” and “he or she shall be guilty of a violation and fined” for “he shall be fined,” inserted “Class D” and deleted “and shall be sentenced to not less than one (1) year nor more than five (5) years in the Department of Corrections. If any person so convicted is punished by a fine only, if such fine is not paid immediately, he shall be confined in the Department of Corrections at hard labor until such fine and costs are paid at the rate of two dollars (\$2.00) per day” from the end.

Cross References. Wine tasting events, § 3-5-104.

CASE NOTES

ANALYSIS

Beer.

Election Contests.

Felony Convictions.

Habeas Corpus.

Penalties.

Beer.

Sale of beer containing not more than 5% alcohol by weight in territory voting dry under this subchapter is a violation of § 3-3-208. *Joy v. State*, 211 Ark. 185, 199 S.W.2d 745 (1947).

Election Contests.

During pendency of election contest wherein previously dry county had voted wet, the sale of beer was unlawful. *Graham v. State*, 240 Ark. 307, 399 S.W.2d 272 (1966).

Felony Convictions.

Defendant charged with committing third offense under this section is charged with a felony, which is a higher offense than that charged for first and second offense. *Robbins v. State*, 219 Ark. 376, 242 S.W.2d 640 (1951).

Information charging defendant with commission of felony in that he sold liquor for third time in dry territory must charge

defendant generally with commission of two prior offenses, and conviction of defendant of a felony for third offense in selling liquor in dry territory was erroneous where information did not do so since defendant was convicted of higher offense than alleged as mere misdemeanor was charged. *Robbins v. State*, 219 Ark. 376, 242 S.W.2d 640 (1951).

A conviction upon a plea of guilty for the felony of the third offense of selling intoxicating liquor in a dry territory not based in the information on a charge of third offense or prior conviction or other allegation to notify the defendant exceeds the court's jurisdiction so that certiorari will lie to quash the judgment. *Switzer v. Golden*, 224 Ark. 543, 274 S.W.2d 769 (1955).

Instructions pertaining to felony provisions of this section were not improperly given. *Wimberly v. State*, 240 Ark. 345, 399 S.W.2d 274 (1966).

Where defendant had two previous convictions for illegal sale of intoxicating liquor, the requirement of statute making subsequent conviction a felony was met and conviction as “second offender” was not required before felony provision applied. *Wimberly v. State*, 240 Ark. 345, 399 S.W.2d 274 (1966).

Habeas Corpus.

Writ of habeas corpus was not the proper remedy where prisoner was convicted under § 3-3-205 for selling liquor in a dry territory covered by this section, since proper remedy was by appeal. *Goodman v. Storey*, 221 Ark. 308, 254 S.W.2d 63 (1952).

Penalties.

Imposition of fine and imprisonment was erroneous where language of indictment indicated offense was for selling liquor in dry territory instead of selling liquor without a license; hence defendant was subject only to a fine. *Robbins v. State*, 219 Ark. 664, 244 S.W.2d 156 (1951).

Cited: *E-Z Mart Stores, Inc. v. Kirksey*, 885 F.2d 476 (8th Cir. 1989).

3-8-210. Authority to continue to issue sale permits.

The Alcoholic Beverage Control Division shall have the authority to continue to issue permits for the sale of beer and of vinous, spirituous, and malt liquors in any political subdivision of the State of Arkansas of the same kind and type issued prior to July 4, 1996, provided that the electorate of such political subdivision has not since July 4, 1996, held an election under the provisions of Initiated Act No. 1 of 1942, §§ 3-8-201 — 3-8-203 and 3-8-205 — 3-8-209.

History. Acts 1993, No. 826, § 1; 1999, No. 632, § 1.

SUBCHAPTER 3 — PROCEEDINGS PURSUANT TO 1935 ACT**SECTION.**

- 3-8-301. Exceptions from act.
- 3-8-302. Petition and order for election.
- 3-8-303. Election costs deposited.
- 3-8-304. Notice and conduct of election.
- 3-8-305. Elections for entire county, district, or city — Effect.
- 3-8-306. Certificate of election results.
- 3-8-307. Effect of vote against sale.
- 3-8-308. Applicability of election laws — Violations.
- 3-8-309. Contests of elections.
- 3-8-310. Effect of voting for or against

SECTION.

- sale — Penalty for unlawful sales.
- 3-8-311. [Repealed.]
- 3-8-312. Sale, barter, or possession for sale or barter in dry area — Penalties.
- 3-8-313. Indictment.
- 3-8-314. Bond for multiple violations.
- 3-8-315. C.O.D. shipments.
- 3-8-316. Act given in charge to grand jury.
- 3-8-317. Wholesale of intoxicating liquor in prohibited territory.

Publisher's Notes. Initiated Act No. 1 of 1942 established a procedure for initiating and conducting local option elections which was different from that established in Acts 1935, No. 108, Art. 7. Section 6 of the 1942 act specifically provided that the act was cumulative to the liquor laws then in force in the state. Additionally, in *Denniston v. Riddle*, 210 Ark. 1039, 199 S.W.2d 308 (1947), Acts 1935, No. 108,

was referred to in the construction of an election held under Initiated Act No. 1 of 1942.

Section 3-8-204 provides, in part, that every petition for a local option election shall be prepared in accordance with Initiated Act No. 1 of 1942 and that such petitions shall be filed and all subsequent proceedings upon them shall be in accordance with Arkansas Constitution,

Amendment 7 regarding initiatives and referendums and with the amendment's enabling acts.

Subsequent to the enactment of § 3-8-204, one section of Acts 1935, No. 108, Art. 7, was amended by Acts 1983, No. 418. It is, therefore, unclear whether certain of the provisions of Acts 1935, No. 108, Art. 7, are superseded to the extent they conflict with Initiated Act No. 1 of 1942 or Arkansas Constitution, Amendment 7 and its enabling acts.

Cross References. Dry territories, § 3-3-301 et seq.

Sale, etc., in dry territory, § 3-8-312.

Vinous, spirituous, and malt liquors defined, § 3-1-102.

Effective Dates. Acts 1935, No. 108, Art. 10: approved Mar. 16, 1935. Emergency clause provided: "Whereas, the repeal of the Eighteenth Amendment to the Constitution of the United States has created an emergency which requires immediate control of intoxicating liquors; and

"Whereas, the present state revenue does not meet the needs for the maintenance and development of the State Government and its agencies and the state's credit is threatened with impairment, an emergency is declared to exist and this act shall become a law and be effective on its passage and approval or nonaction by the Governor."

CASE NOTES

ANALYSIS

Constitutionality.

In General.

Abatement of Nuisances.

Constitutionality.

This subchapter is not in conflict with constitutional provision setting forth procedure for initiated acts, since a petition for submission to the legal voters of the county of the question of the sale of liquor is in the nature of a referendum rather than an initiative petition. *Johnston v. Bramlett*, 193 Ark. 71, 97 S.W.2d 631 (1936).

This subchapter did not delegate the power to make a law but merely the power to ascertain certain facts upon which the law makes its action depend. *Johnston v. Bramlett*, 193 Ark. 71, 97 S.W.2d 631 (1936).

Where objectors appeared and filed ob-

jections to local option petitions, they could not contend this subchapter was unconstitutional in that it deprived them of their property without due process of law. *Bennett v. Moore*, 203 Ark. 511, 157 S.W.2d 515 (1942).

In General.

This subchapter was not repealed by subchapter 2 of this chapter. *Hedrick v. Hickman*, 225 Ark. 273, 280 S.W.2d 406 (1955).

Abatement of Nuisances.

State was not precluded from proceeding to abate defendant's liquor store as a public nuisance because other methods outlined under the Alcoholic Control Act, such as the revocation of the defendant's liquor license or holding of a local option election, might have been followed. *Click v. State*, 206 Ark. 648, 176 S.W.2d 920 (1944).

3-8-301. Exceptions from act.

The provisions of this act shall not apply to any manufacturer or wholesale dealer who, in good faith and in the usual course of trade, sells, by the wholesale, in quantities of not less than five (5) gallons, delivered at one (1) time, not to be drunk on the premises. The provisions of this act shall not apply to dispensaries, hotels, restaurants, or clubs unless it is written in the petition, notice, and order for the election that provisions of this law and prohibition shall apply to dispensaries, hotels, restaurants, or clubs; if not so written, then

licensed dispensaries, hotels, restaurants, or clubs may sell for medicinal purposes in the manner provided in this act.

History. Acts 1935, No. 108, Art. 7, § 7; Pope's Dig., § 14153; A.S.A. 1947, § 48-813.

Meaning of "this act". Acts 1935, No. 108, codified as §§ 3-1-101 — 3-1-103, 3-2-101, 3-2-205, 3-3-101 — 3-3-103, 3-3-212, 3-3-401, 3-3-404, 3-3-405, 3-4-101 —

3-4-103, 3-4-201, 3-4-202, 3-4-207 — 3-4-211, 3-4-213, 3-4-214, 3-4-215 [repealed], 3-4-217, 3-4-219, 3-4-220, 3-4-301 — 3-4-303, 3-4-501, 3-4-503, 3-4-601 — 3-4-605, 3-8-301 — 3-8-311, 3-8-313 — 3-8-317, 23-12-708.

3-8-302. Petition and order for election.

(a) Upon application by written petition, signed by a number of legal voters in any county, city, town, district, or precinct to be affected equal to thirty-five percent (35%) of the qualified voters, it shall be the duty of the judge of the county court in the county at the next regular term thereof, after receiving the petitions, to make an order on his or her order book directing an election to be held in the county, city, town, district, or precinct to be affected thereby, on some day named in the petition no earlier than sixty (60) days after the application is lodged with the judge of the court. However, in counties having two (2) judicial districts, the legal voters in either district may petition for an election and the election can only affect the judicial district where the election may be held.

(b) The order shall direct the sheriff or other officer of the county, who may be appointed to hold the election, to open a poll at each and all of the voting places in the county, city, town, district, or precinct on the appointed date, for the purpose of taking the sense of the legal voters of the county, city, town, district, or precinct, who are qualified to vote at elections for county officers, upon the proposition whether or not spirituous, vinous, or malt liquors shall be sold, bartered, or loaned therein.

History. Acts 1935, No. 108, Art. 7, § 1; Pope's Dig., § 14147; A.S.A. 1947, § 48-807.

CASE NOTES

ANALYSIS

Issuance of Order.
Judicial Review.
Sufficiency of Petitions.

Issuance of Order.

Purpose of provision that election order should be made at next regular term after receiving petition is to give interested persons an opportunity to examine the petitions and to make such contest of their validity or the validity and genuineness of

the signatures thereto, as well as the requisite number of signers, as they may see proper to make. *Phillips v. Mathews*, 203 Ark. 100, 155 S.W.2d 716 (1941).

County court has no jurisdiction to make an order calling an election at the same term and on the same day of the term at which petition was filed and presented, since jurisdiction is wholly dependent upon this section. *Phillips v. Mathews*, 203 Ark. 100, 155 S.W.2d 716 (1941); *Bennett v. Moore*, 203 Ark. 511, 157 S.W.2d 515 (1942).

Order calling election at the same term petition was filed being void, election based upon it is also void. *Phillips v. Mathews*, 203 Ark. 100, 155 S.W.2d 716 (1941).

The requirement for a county judge's order directing that an election be held is directory and not mandatory after the election has taken place. *Reichenbach v. Serio*, 309 Ark. 274, 830 S.W.2d 847 (1992).

Where no order directing that an election be held was entered by the county judge, but an election was held, and the challengers did not demonstrate how the election results would have been altered by an order from the judge, and there was no evidence that electorate did not cast free and intelligent votes, the election was not voided. *Reichenbach v. Serio*, 309 Ark. 274, 830 S.W.2d 847 (1992).

Judicial Review.

County court's order ordering local option election on proposition of sale of liquors, upon petition of 35% of the qualified voters in the county, was not subject to collateral attack by suit in equity to enjoin the election, there being a complete remedy at law by appeal even though there is no specific provision for a review of the county court's findings or judgment. *Swilling v. Biffle*, 192 Ark. 608, 93 S.W.2d 328 (1936).

3-8-303. Election costs deposited.

The county court shall not make the order for the election until the persons signing the petition have deposited with the county judge, in money, an amount sufficient to pay for printing or posting advertisements as provided for, and the fees of the clerk making entries in the order book.

History. Acts 1935, No. 108, Art. 7, § 9; Pope's Dig., § 14156; A.S.A. 1947, § 48-815.

3-8-304. Notice and conduct of election.

(a) It shall be the duty of the county clerk to give the sheriff of the county, or the officer as may be appointed to hold the election, a certified copy of the order of the county court as it appears on the order book within five (5) days after the order is made.

(b) It shall be the duty of the sheriff or other officer to have the order published in some weekly or daily paper published in the county for at

Sufficiency of Petitions.

Where, exclusive of challenged petitioners and of petitions not filed in time, there remained more than statutorily required percentage of the legal voters of the county, petitions were sufficient. *Bennett v. Moore*, 203 Ark. 511, 157 S.W.2d 515 (1942).

In determining jurisdictional sufficiency of petitions, circuit court on appeal from county court had no right to speculate as to whether a petitioner would be eligible to vote in the election it is proposed to call. *Bennett v. Moore*, 203 Ark. 511, 157 S.W.2d 515 (1942).

Ninety petitions were properly treated as the written application of all who signed and who were qualified electors, as there is no requirement that all who join in requesting the election sign the same paper. *Bennett v. Moore*, 203 Ark. 511, 157 S.W.2d 515 (1942).

Counting as qualified electors petitioners who allegedly signed on representation that it was the purpose of election to make county dry was not error where none of the witnesses called testified that in the absence of such representations the petitions would not have been signed. *Bennett v. Moore*, 203 Ark. 511, 157 S.W.2d 515 (1942).

Cited: *Tabor v. O'Dell*, 212 Ark. 902, 208 S.W.2d 430 (1948); *Armstrong v. Sims*, 715 F. Supp. 1440 (E.D. Ark. 1989).

least two (2) weeks before the election and also to advertise the order by printed or written handbills posted at some conspicuous place in each precinct in the county, for the same length of time, and when the election is held for the entire town, district, or precinct of any county, then at five (5) conspicuous places therein for the same length of time. In any case, if there is no weekly or daily newspaper published in the county or if the proprietor of the newspaper refuses to publish the notice, the printed or written handbills, posted as before provided for, shall be sufficient notice.

(c) The sheriff or other officer shall have the advertisement and notices herein provided for published and posted as herein required within seven (7) days after he or she receives the order of the county court.

(d) All elections provided for in this act shall be held by the officers who would be qualified to hold elections for county officers, and they shall be selected in the same way, and all elections provided for herein shall be held in accordance with the provisions of the general election laws of the state.

History. Acts 1935, No. 108, Art. 7, § 2; Pope's Dig., § 14148; A.S.A. 1947, § 48-808.

Meaning of "this act". See note to § 3-8-301.

CASE NOTES

Time for Election.

Election proceeding under subchapter 2 of this chapter was not subject to former limitation of Acts 1935, No. 108 preventing the holding of election within 30 days preceding or following regular political

election. *Mondier v. Medlock*, 207 Ark. 790, 182 S.W.2d 869 (1944).

Cited: *Baker v. Boone*, 230 Ark. 843, 327 S.W.2d 85 (1959); *Armstrong v. Sims*, 715 F. Supp. 1440 (E.D. Ark. 1989).

3-8-305. Elections for entire county, district, or city — Effect.

(a)(1) No election in any town, city, district, or precinct of a county shall be held under this subchapter on the same day on which an election for the entire county is held.

(2) When an election is held in an entire county and a majority of the legal votes cast at the election are against the sale, barter, or loan of spirituous, vinous, malt, or other intoxicating liquors, then it shall not be lawful to sell, barter, or loan any liquors in any portion of the county.

(3) If, at an election for the entire county, the majority of the legal votes cast are in favor of the sale, barter, or loan of any liquors, the election shall not operate to make it legal to grant license to sell, barter, or loan such liquors in any territorial division of the county from which the sale, barter, or loan has been excluded by an election held under this subchapter, but the status of the territorial division shall remain as if no election had been held.

(b)(1) No election shall be held in any election precinct under this act on the same day on which an election is held for the district or city of which the precinct is a part.

(2) If, at an election held for the entire district or city, the majority of legal votes cast shall be in favor of the sale, barter, or loan of spirituous, vinous, malt, or other liquors, then the status in the several precincts thereof shall remain as it was before the election.

(3) If the majority should be against the sale, then the sale, barter, or loan of such liquors shall be unlawful in every portion of the district or city.

History. Acts 1935, No. 108, Art. 7, § 10; Pope's Dig., § 14157; A.S.A. 1947, § 48-816.

Meaning of "this act". See note to § 3-8-301.

CASE NOTES

ANALYSIS

Contemporaneous Elections.
Proof of Status.
Subsequent Elections.

Contemporaneous Elections.

A violation of this section might void the precinct election held contemporaneously with a county-wide election, but it would have no effect on the validity of a county-wide election. *Countz v. Roe*, 231 Ark. 108, 328 S.W.2d 353 (1959).

Proof of Status.

Where challengers failed to offer any proof of the status of county liquor law at the time of the local option election, they

did not establish that the absence of a countywide election entitled them to relief. *Bates v. Mikles*, 309 Ark. 551, 832 S.W.2d 225 (1992).

Subsequent Elections.

Once a county votes "dry," no part of the county can have a separate local option election independent of the entire county. *Denniston v. Riddle*, 210 Ark. 1039, 199 S.W.2d 308 (1947); *Bates v. Mikles*, 309 Ark. 551, 832 S.W.2d 225 (1992).

In a "wet" county, an enumerated subdivision of the county may vote itself "dry," and only a subsequent vote by that subdivision can affect the status of the subdivision's liquor law. *Bates v. Mikles*, 309 Ark. 551, 832 S.W.2d 225 (1992).

3-8-306. Certificate of election results.

(a) If it shall be found that a majority of the legal votes cast at any election provided for in this subchapter were given for or against the manufacture, sale, barter, loan, or giving away of any intoxicating liquors in the county, city, town, district, or precinct, it shall be the duty of the county board of election commissioners to certify that fact. The certificate shall be delivered to the clerk of the county court with a map or plat of the area covered by the election results and safely kept by him until the next regular term of the county court.

(b) At the next regular term, the judge of the county court shall have the certificate spread upon the record of his court.

(c) The entry of the certificate in the record or a certified copy thereof shall be prima facie evidence in any or all proceedings under this act.

(d) When the local option results have been spread of record by the county clerk, the county clerk shall notify the Alcoholic Beverage Control Division of the results of the local option elections within thirty (30) days after the certificate has been spread of record. The notification submitted to the division shall include a certified copy of the election results and a map or plat of the area covered by the election results.

History. Acts 1935, No. 108, Art. 7, § 3; Pope's Dig., § 14149; Acts 1983, No. 418, § 1; A.S.A. 1947, § 48-809. **Meaning of "this act".** See note to § 3-8-301.

CASE NOTES

Delivery to Clerk.

The Local Option Code does not require county judge approval to effect certification of election results but only delivery to the county clerk. *Lawson v. St. Francis County Election Comm'n*, 309 Ark. 135, 827 S.W.2d 159 (1992).

Cited: *Hedrick v. Hickman*, 225 Ark. 273, 280 S.W.2d 406 (1955); *Parker v. Hendriks*, 239 Ark. 667, 393 S.W.2d 251 (1965); *Armstrong v. Sims*, 715 F. Supp. 1440 (E.D. Ark. 1989).

3-8-307. Effect of vote against sale.

If, at any election provided for in this act, a majority of the legal votes cast are against the sale, barter, or loan of spirituous, vinous, or malt liquors, then the sale, barter, or loan of any such liquors shall be unlawful in such county, city, town, district, or precinct, as the case may be, except as provided, unless at a subsequent election held under this act, a majority of the legal votes cast shall be in favor of the sale of the liquors.

History. Acts 1935, No. 108, Art. 7, § 11; Pope's Dig., § 14158; A.S.A. 1947, § 48-817. **Meaning of "this act".** See note to § 3-8-301.

CASE NOTES

Subsequent Election.

Once an entire county has voted to be "dry," no portion of the county may hold an independent local option election. *Bates v. Mikles*, 309 Ark. 551, 832 S.W.2d 225 (1992).

In a "wet" county, an enumerated subdivision of the county may vote itself "dry," and only a subsequent vote by that subdivision can affect the status of the subdivision's liquor law. *Bates v. Mikles*, 309 Ark. 551, 832 S.W.2d 225 (1992).

3-8-308. Applicability of election laws — Violations.

(a) If, at any election provided for in this act, any person shall vote who is not entitled to vote under the laws of this state at elections for county officers, he or she shall be punished as for a violation of the general laws on elections.

(b) All general laws to protect the purity of elections shall be applicable to this act.

History. Acts 1935, No. 108, Art. 7, § 11; Pope's Dig., § 14158; A.S.A. 1947, § 48-817. **Meaning of "this act".** See note to § 3-8-301.

3-8-309. Contests of elections.

(a) Any election held under this act may be contested as provided for in this section.

(b)(1) Any number of the citizens and legal voters, but not less than ten (10), of the county, city, town, district, or precinct in which the elections have been held, shall have the right to contest any election held under this act and shall be designated the contestants.

(2) The contestants shall file, within ten (10) days after the final action of the examining board, in the office of the clerk of the county court a written statement of the grounds of the contest. They shall cause a copy of the statement to be served on the county judge and shall give notice thereof by written or printed notice to be posted at the courthouse door of the county, and in three (3) or more public places in the county, city, town, district, or precinct in which the election has been held. They shall cause the notice to be published in some newspaper of the county, when possible, for two (2) consecutive issues, commencing not later than the first issue of the paper after filing the statement.

(3) When a notice of the contest shall be executed on the county judge, the certificate shall not be recorded.

(c) Any number of the citizens and legal voters, not less than ten (10), of the county, city, town, district, or precinct in which the election has been held, may resist the contest by filing in the office of the clerk of the county court a statement controverting the grounds of the contestants and may state any additional grounds to sustain the election, and they shall be designated as the contestees.

(d) The contest shall be heard and determined by the same board which, by law, is authorized and empowered to hear and determine a contest of an election for county officers. The same provisions of the statutes shall apply to the contest of any election held under this act as are provided for the contest of any election for county officers, except as provided in this section.

(e) Notice for the taking of depositions or other proceedings in the contest may be executed on the person whose name appears first as contestant or contestee, which shall be deemed notice to all his or her associates.

(f) In case the required number shall fail to appear as contestees, ex parte testimony shall be competent before the contesting board.

(g) The trial of the case shall be on the fourth Monday after the filing in the county clerk's office of the grounds of the contest; however, the board, for good cause, may allow further time.

(h) The decision of the board shall be given in writing and signed in triplicate. One (1) copy shall be delivered to the contestants and one (1) copy to the contestees, and the other shall be delivered to the county clerk of the county in which the contest is pending, which shall be entered on the record of the county court.

(i) If the decision of the board is that a majority of the legal votes cast at the election were against the sale of such liquors, the entry of the

decision shall have the same effect as the recording of the certificates of the examining board as provided in § 3-8-306.

(j) The contestants or contestees shall have the right to appeal from the decision of the board to the circuit court of the county where the contest is pending, in the same way as appeals are taken from the lower courts to the circuit court. An appeal from the circuit court may be taken as provided by law.

(k) The cost of the contest shall be adjudged against the unsuccessful parties.

History. Acts 1935, No. 108, Art. 7, §§ 14-16; Pope's Dig., §§ 14161-14169; A.S.A. 1947, §§ 48-820 — 48-822.

Meaning of "this act". See note to § 3-8-301.

CASE NOTES

ANALYSIS

Appeal.

Evidence.

Jurisdiction.

Nature of Proceedings.

Standing.

Sufficiency of Petition.

Time of Filing.

—Answer.

Appeal.

The effect of the election was suspended upon appeal from contest of local option election. *Hedrick v. Hickman*, 225 Ark. 273, 280 S.W.2d 406 (1955).

Evidence.

This section contemplates proof even where there are no contestees. *Garrett v. Andrews*, 294 Ark. 160, 741 S.W.2d 257 (1987), cert. denied, 487 U.S. 1219, 108 S. Ct. 2873, 101 L. Ed. 2d 908 (1988).

Jurisdiction.

Contest of the result of local option election came under statutes providing for contest of any election and should have been brought in circuit court instead of county court. *Henderson v. Anderson*, 251 Ark. 724, 475 S.W.2d 508 (1972).

Subsection (d) of this section provides that local option election contest is to be heard by same "board" that is authorized by law to hear a contest of an election for county officers; "board" now means circuit court. *Garrett v. Andrews*, 294 Ark. 160, 741 S.W.2d 257 (1987), cert. denied, 487 U.S. 1219, 108 S. Ct. 2873, 101 L. Ed. 2d 908 (1988).

Nature of Proceedings.

Local option election contest is a special proceeding; it is not necessary that all of the rules of civil procedure be applied. *Garrett v. Andrews*, 294 Ark. 160, 741 S.W.2d 257 (1987), cert. denied, 487 U.S. 1219, 108 S. Ct. 2873, 101 L. Ed. 2d 908 (1988).

Standing.

Election commissioner had standing to resist election contest. *Garrett v. Andrews*, 294 Ark. 160, 741 S.W.2d 257 (1987), cert. denied, 487 U.S. 1219, 108 S. Ct. 2873, 101 L. Ed. 2d 908 (1988).

Sufficiency of Petition.

A petition for contest of local option election which contained conclusions of law that illegal votes were cast but did not specifically identify any allegedly illegal vote or voter was insufficient. *Craig v. Barron*, 225 Ark. 433, 283 S.W.2d 127 (1955).

Time of Filing.

Where petition for contest of local option liquor election was filed with county board of election commissioners within the statutory period after the declaration of the results of the election but supplementary petition asking the county court to take jurisdiction of the case was not filed until after the expiration of the period, the petition was not properly filed within the time allowed by law. *Craig v. Barron*, 225 Ark. 433, 283 S.W.2d 127 (1955).

An election contest petition may not be amended by setting out more specifically the illegal votes complained of after the

expiration of the time limit for the filing of the petition. *Jones v. Etheridge*, 242 Ark. 907, 416 S.W.2d 306 (1967).

Phrase "within 10 days after the final action of the examining board" in subdivision (b)(2) of this section means within 10 days after the certification of vote. *Garrett v. Andrews*, 294 Ark. 160, 741 S.W.2d 257 (1987), cert. denied, 487 U.S. 1219, 108 S. Ct. 2873, 101 L. Ed. 2d 908 (1988).

Trial court erred in refusing to dismiss complaint due to its untimely filing. *Garrett v. Andrews*, 294 Ark. 160, 741 S.W.2d 257 (1987), cert. denied, 487 U.S. 1219, 108 S. Ct. 2873, 101 L. Ed. 2d 908 (1988).

—Answer.

This section does not set a specific number of days for the filing of an answer; trial

court may permit an answer at any time between prompt filing and expedited trial. *Garrett v. Andrews*, 294 Ark. 160, 741 S.W.2d 257 (1987), cert. denied, 487 U.S. 1219, 108 S. Ct. 2873, 101 L. Ed. 2d 908 (1988).

Cited: *Ward v. Boone*, 231 Ark. 655, 331 S.W.2d 875 (1960); *Parker v. Hendriks*, 239 Ark. 667, 393 S.W.2d 251 (1965); *Parker v. Rowan*, 239 Ark. 929, 395 S.W.2d 338 (1965); *Wurst v. Lowery*, 286 Ark. 474, 695 S.W.2d 378 (1985); *Garrett v. Andrews*, 294 Ark. 160, 741 S.W.2d 257 (1987) (Supp. Op.) *Lawson v. St. Francis County Election Comm'n*, 309 Ark. 135, 827 S.W.2d 159 (1992).

3-8-310. Effect of voting for or against sale — Penalty for unlawful sales.

(a)(1) Whenever a local option election shall be held in any county, city, town, district, or precinct in this state and a majority of the votes cast at the election shall be in favor of prohibiting the sale of liquor in the territory in which the election shall have been held, the law prohibiting the sale shall be in full force and effect at the expiration of sixty (60) days from the date of the entry of the certificate of the canvassing board in the record of the county court.

(2) After the expiration of sixty (60) days, no liquor license theretofore issued in the territory under the laws of this state shall be of any force or effect whatever, but the owner of the license shall be entitled to recover from the county, city, town, district, or precinct to which the license money was paid, the proportional part thereof as the unexpired period of license bears to the whole of the year.

(b)(1) Upon conviction, any person who shall sell, barter, or loan directly or indirectly any such liquors in the city, county, town, district, or precinct after sixty (60) days shall be guilty of a Class C misdemeanor.

(2) Upon conviction, any person who knowingly furnishes or rents a house, room, wagon, or any conveyance or thing in which spirituous, vinous, or malt liquors are sold, bartered, or loaned, in violation of this act, shall be guilty of a violation and fined not less than sixty dollars (\$60.00) nor more than one hundred dollars (\$100). The house, wagon, vehicle, or other thing in which the liquors were sold, bartered, or loaned shall be liable for all fines adjudged against the person selling, bartering, or loaning the same.

(c) In the event that a majority of the votes cast at the election shall be in favor of the sale of liquors, then no license shall be granted to any person, firm, or corporation to sell such liquors in the territory until after the expiration of the aforesaid sixty (60) days, if the issuing of the

liquor license was in that territory prohibited by law prior to the holding of the election.

History. Acts 1935, No. 108, Art. 7, § 4; Pope's Dig., § 14150; A.S.A. 1947, § 48-810; Acts 2005, No. 1964, § 7; 2005, No. 1994, § 406.

A.C.R.C. Notes. Pursuant to § 1-2-207, this section is set out above as amended by Acts 2005, No. 1994. This section was also amended by Acts 2005, No. 1964, § 7, to read as follows: "Effect of voting for or against sale.

(a)(1) Whenever a local option election shall be held in any county, city, town, district, or precinct in this state and a majority of the votes cast at the election shall be in favor of prohibiting the sale of liquor in the territory in which the election shall have been held, the law prohibiting the sale shall be in full force and effect at the expiration of sixty (60) days from the date of the entry of the certificate of the canvassing board in the record of the county court.

"(2) After the expiration of sixty (60) days, no liquor license previously issued in the territory under the laws of this state shall be of any force or effect, but the owner of the license shall be entitled to

recover from the county, city, town, district, or precinct to which the license money was paid, the proportional part of the money as the unexpired period of license bears to the whole of the year.

"(b) In the event that a majority of the votes cast at the local option election shall be in favor of the sale of liquors, then no license shall be granted to any person, firm, or corporation to sell the liquors in the territory until after the expiration of the sixty-day period under subsection (a) of this section, if the issuing of the liquor license was in that territory prohibited by law prior to the holding of the election."

Amendments. The 2005 amendment substituted "guilty of a Class C misdemeanor" for "fined not less than sixty dollars (\$60.00) nor more than one hundred dollars (\$100) and be confined in the county jail for not less than twenty (20) nor more than forty (40) days for each offense" in (b)(1); and inserted "guilty of a violation and" in (b)(2).

Meaning of "this act". See note to § 3-8-301.

CASE NOTES

Beer.

Where city voted dry, the sale of beer with an alcoholic content of not more than 5% was also prohibited, notwithstanding the definitions contained in § 3-1-102. *McKeown v. State*, 197 Ark. 454, 124 S.W.2d 19 (1939).

Cited: *Hedrick v. Hickman*, 225 Ark. 273, 280 S.W.2d 406 (1955); *Parker v. Hendriks*, 239 Ark. 667, 393 S.W.2d 251 (1965).

3-8-311. [Repealed.]

Publisher's Notes. This section, concerning the penalties for sale, barter or loan in dry territory, was repealed by Acts 2005, No. 1964, § 8. The section was derived from Acts 1935, No. 108, Art. 7, §§ 5, 6; Pope's Dig., §§ 14151, 14152; A.S.A. 1947, §§ 48-811, 48-812.

The amendment to this section by Acts 2005, No. 1994, § 407 was superseded by the repeal of this section by Acts 2005, No. 1964, § 8. As amended by Acts 2005, No. 1994, § 407, this section read:

"(a)(1) It shall be unlawful for anyone

to sell, barter, or loan, directly or indirectly, any beverage containing any alcohol or any liquid mixture or decoction of any kind which produces or causes intoxication in any county, city, town, district, or precinct in which the sale, barter, or loan of spirituous, vinous, or malt liquors is or shall be prohibited in accordance with the local option law.

"(2) Any sale, barter, or loan of any article with the agreement, expressed or implied, that the right or title to or possession of any such beverage, liquid mix-

ture, or decoction shall also pass, shall be considered a sale, barter, or loan within the terms of this subsection.

“(3) Any person who shall sell, barter, or loan, directly or indirectly, any such beverage, liquid mixture, or decoction in any such county, city, town, or precinct, shall, upon conviction, be guilty of a violation and fined the sum of not less than twenty dollars (\$20.00) nor more than one hundred dollars (\$100) for each offense.

“(b) It shall be unlawful for any person to sell, lend, give, procure for, or furnish to another, any spirituous, vinous, or malt liquors, or to have in his or her possession spirituous, vinous, or malt liquors, for the purpose of selling them in any territory where this act is in force. Any person so offending shall be guilty of a Class C

misdemeanor.

“(c) The possession of a United States special tax stamp commonly called United States license for carrying on the business of a retail dealer in spirituous, vinous, or malt liquors, or the having of the tax permit issued by the Director of the Department of Finance and Administration or license at the place of business in the territory shall be prima facie evidence of guilt under this section.

“(d) Nothing herein shall prohibit the sale, barter, loan, or having in the custody or possession of any person any beverage, liquid mixture, or decoction for the sale of which the United States does not require the payment of the special tax on retail liquor dealers.”

3-8-312. Sale, barter, or possession for sale or barter in dry area — Penalties.

(a) It shall be unlawful for any person, firm, or corporation to sell or barter, or possess for purposes of sale or barter, any intoxicating liquor or beverage in any county, township, municipality, ward, or precinct in which the sale or barter of intoxicating liquor or beverage is or shall be prohibited by law.

(b)(1) Upon first conviction, any person or officers of any firm or corporation that shall do so shall be guilty of a violation and shall be fined not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000).

(2) The person or officers of a firm or corporation for a second conviction shall be guilty of a violation and fined not less than two hundred dollars (\$200) nor more than two thousand dollars (\$2,000).

(3) For any subsequent conviction, the person or officers of a firm or corporation shall be guilty of a Class D felony.

(c) The defendant shall be specifically charged with violating the felony provision of this section.

(d) Bond forfeitures under this section or any statute or municipal ordinance of this state prohibiting the unlawful sale or barter or possession for sale or barter of any intoxicating liquor or beverage shall be considered as a conviction in determining whether or not the defendant is properly charged with a second offense or a felony as set out in this section.

History. Acts 1953, No. 395, § 1; A.S.A. 1947, § 48-811.1; Acts 2005, No. 1964, § 9; 2005, No. 1994, § 420.

A.C.R.C. Notes. Pursuant to § 1-2-207, this section is set out above as amended by Acts 2005, No. 1994. Subsection (b) of this section was also amended

by Acts 2005, No. 1964, § 9, to read as follows: “Any person, or officers of any firm or corporation, who violates subsection (a) of this section shall upon first conviction be deemed guilty of a violation and shall be fined not less than four hundred dollars (\$400) or more than four thousand dollars

(\$4,000). The person or officers of a firm or corporation for a second conviction shall be fined not less than eight hundred dollars (\$800) or more than eight thousand dollars (\$8,000). For any subsequent conviction, the person or officers of a firm or corporation shall be deemed guilty of a felony and shall be sentenced to not less than one (1) year nor more than five (5) years in the Department of Corrections."

Publisher's Notes. This section may affect §§ 3-3-205(a), 3-3-301 et seq., and 3-8-311.

This section may be affected by § 3-8-103.

Acts 1993, No. 1258, § 5, provided: "Arkansas Code §§ 3-8-209, 3-8-311, 3-8-312, and 3-3-306 are repealed to the extent they conflict with this act."

Amendments. The 2005 amendment substituted "violation" for "misdemeanor," in (b)(1); inserted "guilty of a violation and" in (b)(2); inserted "Class D" and deleted "and shall be sentenced to not less than one (1) year nor more than five (5) years in the Department of Corrections" from the end.

Cross References. Wine tasting events, § 3-5-104.

CASE NOTES

ANALYSIS

Evidence.

Felony Convictions.

Search and Seizure.

Evidence.

Evidence given by the arresting officers that they determined from the smell of the alleged liquor that it was intoxicating liquor, was competent and its weight a question for the jury. *Burke v. State*, 235 Ark. 882, 362 S.W.2d 695 (1962), cert. denied, 373 U.S. 922, 83 S. Ct. 1523, 10 L. Ed. 2d 421 (1963).

Felony Convictions.

Defendant whose prior convictions preceded passage of this section held properly charged under the felony provisions of

this section. *Burke v. State*, 235 Ark. 882, 362 S.W.2d 695 (1962), cert. denied, 373 U.S. 922, 83 S. Ct. 1523, 10 L. Ed. 2d 421 (1963).

Search and Seizure.

In answer to defendant's contention that evidence was obtained by illegal search in that it was obtained by search without a warrant, the testimony of the arresting officers added up to probable cause for the search. *Burke v. State*, 235 Ark. 882, 362 S.W.2d 695 (1962), cert. denied, 373 U.S. 922, 83 S. Ct. 1523, 10 L. Ed. 2d 421 (1963).

Cited: *Mann v. Heber Springs*, 239 Ark. 969, 395 S.W.2d 557 (1965); *Stewart v. State*, 240 Ark. 701, 402 S.W.2d 116 (1966); *Clark v. State*, 246 Ark. 1151, 442 S.W.2d 225 (1969).

3-8-313. Indictment.

(a) In an indictment for a violation of any provision of this act or for a violation of any act amendatory hereof, it shall not be necessary to allege that a vote was taken or any election held, or any other step relative thereto.

(b) It may be simply stated that the act or acts charged were committed in a territory where this act was in force, and in the indictment it shall be sufficient to designate this act as the local option law.

History. Acts 1935, No. 108, Art. 7, § 6; Pope's Dig., § 14152; A.S.A. 1947, § 48-812.

Meaning of "this act". See note to § 3-8-301.

3-8-314. Bond for multiple violations.

(a) On the second or any subsequent conviction for a violation of this act or any of its amendments, the court shall require the defendant to execute bond in the sum of two hundred dollars (\$200) to be of good behavior for the period of twelve (12) months.

(b) The court may, in its discretion, increase the amount of the bond. If the bond is not given, the defendant shall be committed to the county jail for a period not exceeding ninety (90) days, to be fixed by the court.

History. Acts 1935, No. 108, Art. 7, § 6; Pope's Dig., § 14152; A.S.A. 1947, § 48-812. **Meaning of "this act".** See note to § 3-8-301.

Publisher's Notes. Section 3-3-103 also requires bonds for multiple offenders.

3-8-315. C.O.D. shipments.

(a) All the shipments of spirituous, vinous, or malt liquors to be paid for on delivery, commonly called "C.O.D. shipments", into any county, city, town, district, or precinct where this act is in force shall be unlawful and shall be deemed sales of such liquors at the place where the money is paid or the goods delivered.

(b) The carrier and his or her agents selling or delivering such goods shall be liable jointly with the vendor thereof.

History. Acts 1935, No. 108, Art. 7, § 6; Pope's Dig., § 14152; A.S.A. 1947, § 48-812. **Meaning of "this act".** See note to § 3-8-301.

3-8-316. Act given in charge to grand jury.

It shall be the duty of the judges of the circuit courts to give this act in charge to the grand juries of the counties within their jurisdiction.

History. Acts 1935, No. 108, Art. 7, § 13; Pope's Dig., § 14160; A.S.A. 1947, § 48-819. **Meaning of "this act".** See note to § 3-8-301.

RESEARCH REFERENCES

Ark. L. Rev. Gingerich, The Arkansas Grand Jury, etc., 40 Ark. L. Rev. 55.

3-8-317. Wholesale of intoxicating liquor in prohibited territory.

(a) It shall be unlawful to sell by wholesale any spirituous, vinous, malt, or other intoxicating liquor, regardless of the name by which it is called, except manufacturers selling liquor of their own make at the place of manufacture to a wholesale dealer or a licensed retail dealer, in any county, city, town, district, or precinct where the sale of liquor has been prohibited by vote of the people under the local option law.

(b) Any person violating this act shall be deemed guilty of violating the local option law and shall be subject to trial and punishment according to the provisions of the local option law and its amendments.

History. Acts 1935, No. 108, Art. 7, § 8; Pope's Dig., § 14154; A.S.A. 1947, § 48-814. **Meaning of "this act".** See note to § 3-8-301.

SUBCHAPTER 4 — BEER AND LIGHT WINE

SECTION.

3-8-401. Beer and light wine.

3-8-401. Beer and light wine.

(a) At each general election for state and county offices, there may be submitted to the qualified electors of any county in the State of Arkansas so desiring, in the manner provided for the submission in a county of the question under the initiative and referendum provisions of the Constitution and laws of the State of Arkansas, the question as to whether the sale of beer and light wine containing alcohol not in excess of five percent (5%) by weight shall or shall not be permitted within the county for two (2) years in case the matter is voted on at a general election.

(b) In voting upon the question, the electors shall have printed or written upon their ballot, "FOR the sale of beer and light wines" or "AGAINST the sale of beer and light wines".

(c) The election shall be held at the same time and place and in the same manner as other elections. All returns shall be canvassed, sealed, and forwarded by the officers of the election to the county board of election commissioners of the county voting thereon.

(d) The board shall canvass the votes and certify the results thereof to the clerk of the circuit court of the county to be by him or her filed in his or her office, which certificate shall be prima facie evidence of the legal or illegal sale of beer and light wine in the county.

(e) Each and every county voting against the sale of beer and light wine shall not participate in any revenue for school purposes levied and collected under § 3-5-205 during the time the county or counties prohibited the sale of the beer and light wine.

(f) The expense of the election shall be borne by the petitioners calling the election.

History. Acts 1933 (1st Ex. Sess.), No. 7, § 27-A; Pope's Dig., § 14220; A.S.A. 1947, § 48-518.

Publisher's Notes. Initiated Act No. 1 of 1942 established a procedure for initiating and conducting local option elections which was different from that established in this section. Section 6 of the 1942 act

specifically provided that the act was cumulative to the liquor laws then in force in the state. Section 3-8-204 provides, in part, that every petition for a local option election shall be prepared in accordance with Initiated Act No. 1 of 1942 and that petitions shall be filed and all subsequent proceedings upon them shall be in accor-

dance with Ark. Const., Amend. 7, regarding initiatives and referendums, and the amendment's enabling acts.

It is, therefore, uncertain whether the provisions of this section are superseded to the extent they conflict with Initiated Act No. 1 of 1942 or Ark. Const., Amend. 7, and its enabling acts.

This section originally applied to beer and light wines of an alcoholic content not in excess of 3.2% by weight. Pursuant to § 3-1-103, this section was made to apply to malt and vinous beverages having an

alcoholic content of not more than 5% by weight.

Section 3-5-401 et seq. regulates the manufacture, sale, and transportation of all wines made from grapes, berries, fruits, and vegetables. The scope of those sections is not limited by the alcoholic content of such wines, and it is not clear whether § 3-5-401 et seq. was intended to supersede § 3-5-201 et seq. and this section with respect to the regulation of the manufacture, sale, and transportation of light wines.

CASE NOTES

Cited: McKeown v. State, 197 Ark. 454, 124 S.W.2d 19 (1939).

SUBCHAPTER 5 — PETITION FOR LOCAL OPTION ELECTIONS

SECTION.

3-8-501. Definitions.

3-8-502. Local option elections in certain annexed areas.

3-8-501. Definitions.

As used in this subchapter:

- (1) "Dry" means that the manufacture, sale, barter, loan, or giving away of intoxicating liquors is unlawful in a prescribed area;
- (2) "Intoxicating liquors" means all beverages containing more than one-half of one percent (0.5%) of alcohol by weight; and
- (3) "Wet" means that the manufacture, sale, barter, loan, or giving away of intoxicating liquors is lawful in a prescribed area.

History. Acts 2005, No. 1258, § 1.

3-8-502. Local option elections in certain annexed areas.

(a)(1)(A) If an area meets the qualifications provided in subdivision (a)(1)(B) of this section, the residents of the area may petition the county clerk of the county for a local option election to determine whether off-premises retail beer permits and off-premises Arkansas native wine retail permits shall be issued within the annexed area.

(B) An area qualifies to hold a local option election under this subchapter if:

- (i) The area has been annexed from a dry township into a wet contiguous and adjoining city or incorporated town;
- (ii) The annexed area is separated from the remainder of the dry township by a four-lane divided highway; and
- (iii) A nonbinding election was held between November 1, 2004, and January 1, 2005, in the annexed area on the issue of whether

intoxicating liquors may be manufactured, sold, bartered, loaned, or given away within the annexed area.

(2) The petition requesting a local option election shall be prepared in the manner provided by § 3-8-204.

(3)(A) When thirty-eight percent (38%) of the qualified electors of the annexed area, as shown on county voter registration records, sign a petition requesting a local option election, the county clerk shall determine the sufficiency of the petition within ten (10) days of the filing of the petition.

(B) If the county clerk verifies that thirty-eight percent (38%) of the qualified electors of the annexed area have signed the petition, the county clerk shall certify that finding to the county board of election commissioners.

(C) The question shall be placed upon the ballot in the annexed area at the next biennial November general election, as provided in § 3-8-101.

(D) Any appeal of the order of the county court shall be taken in the manner provided by § 3-8-205(c)-(e).

(4)(A) The election shall be conducted in the manner provided by § 3-8-206(a) and (b).

(B) Upon petition of fifteen percent (15%) of the interested legal voters in the annexed area, within ten (10) days after the date of the election, the county board of election commissioners shall immediately recount the votes and declare the result of the election as determined by the recount.

(C) Within twenty (20) days after the election, the county court shall make and enter of record its order declaring the result of the election.

(D) The costs of any elections held under this subchapter shall be paid by the county in the same manner as other costs of general elections.

(5) Upon petition of fifteen percent (15%) of the interested legal voters in the annexed area filed with the circuit clerk of the county in which proceedings are pending, the circuit court shall immediately by mandamus compel the county court or other officials to perform the duties imposed upon them under this section.

(b)(1) If, at the local option election, a majority of the electors of the annexed area vote for the issuance of off-premises retail beer permits and off-premises Arkansas native wine retail permits within the annexed area, the Director of the Alcoholic Beverage Control Division may issue off-premises retail beer permits and off-premises Arkansas native wine retail permits within the annexed area.

(2) If a majority of the electors of the annexed area vote against the issuance of off-premises retail beer permits and off-premises Arkansas native wine retail permits, it shall be unlawful for the director or any county or municipal officer to issue any off-premises retail beer permit or off-premises Arkansas native wine retail permit until the prohibition shall be repealed by a majority vote as provided in this section.

(3) At least four (4) years shall elapse before another local option election may be held in the annexed area.

History. Acts 2005, No. 1258, § 1.

CHAPTER 9

ON-PREMISES CONSUMPTION

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. ALCOHOLIC BEVERAGES GENERALLY.
3. WINE.
4. SUNDAY SALES.
5. SUNDAY BEER AND WINE PERMIT.
6. WINE AND BEER ON-PREMISES LICENSE.

A.C.R.C. Notes. References to “this chapter” in subchapters 1-4 may not apply to subchapter 5, which was enacted subsequently.

RESEARCH REFERENCES

A.L.R. Choice of law as to liability of seller for injuries caused by intoxicated person. 2 A.L.R.4th 952. Tavernkeeper’s liability to patron for third person’s assault. 43 A.L.R.4th 281.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

3-9-101. Nudity on premises prohibited
— Penalty — Regulations.

3-9-101. Nudity on premises prohibited — Penalty — Regulations.

(a) No person who has received a permit under any law of the State of Arkansas for the sale or dispensing of alcoholic beverages for on-premises consumption shall suffer or permit any person to appear on the permitted premises in such manner or attire as to expose to view any portion of the pubic area, anus, vulva, or genitals or any simulation thereof, nor suffer or permit any female to appear on the premises in such manner or attire as to expose to view any portion of her breast below the top of the areola or any simulation thereof.

(b) Any hotel-motel-restaurant mixed drink permittee or private club permittee violating this section shall be subject to the penalties prescribed in §§ 3-9-201 — 3-9-214, 3-9-221 — 3-9-225, and 3-9-232 — 3-9-237 for the violation of those sections.

(c) The Alcoholic Beverage Control Board shall promulgate such regulations as it deems necessary for the implementation of this section.

History. Acts 1985, No. 965, §§ 1, 2; A.S.A. 1947, §§ 48-956, 48-957.

Publisher's Notes. Acts 1985, No. 965, §§ 1, 2, are also codified as § 3-5-222.

SUBCHAPTER 2 — ALCOHOLIC BEVERAGES GENERALLY

SECTION.

- 3-9-201. Legislative determinations and intent.
- 3-9-202. Definitions.
- 3-9-203. Applicability — Purpose and effect of referendum election.
- 3-9-204. Penalties.
- 3-9-205. Rules and regulations — Police power of state and local governments.
- 3-9-206. Referendum elections — Conduct.
- 3-9-207. Referendum elections — Effect.
- 3-9-208. Subsequent local option elections.
- 3-9-209. Sales without permit prohibited.
- 3-9-210. Permit to sell beverages — Issuance.
- 3-9-211. Permit to sell beverages — Scope — Effect on other laws.
- 3-9-212. Permit to sell beverages — Fees.
- 3-9-213. Gross receipts and supplemental taxes on sale of alcoholic beverages.
- 3-9-214. Supplemental tax or fee on sales levied by political subdivisions.
- 3-9-215. Authorization of Sunday sales.
- 3-9-216. Authorization of sales on Sundays for certain large attendance facilities.

SECTION.

- 3-9-217 — 3-9-220. [Reserved.]
- 3-9-221. Private clubs — Exception from alcoholic beverage laws.
- 3-9-222. Private clubs — Procedure for obtaining permit.
- 3-9-223. Private clubs — Permit renewal fees — Taxes.
- 3-9-224. Private clubs — Sales prohibited.
- 3-9-225. Private clubs — Rules and regulations.
- 3-9-226. Private clubs — Advertising.
- 3-9-227. Large attendance facility mixed drink permit.
- 3-9-228. Private clubs — Reapplication for permit.
- 3-9-229. Collection of taxes.
- 3-9-230, 3-9-231. [Reserved.]
- 3-9-232. Inspection of premises and records of licensed premises and private clubs.
- 3-9-233. Closing hours.
- 3-9-234. Failure to pay renewal fees or taxes.
- 3-9-235. Suspension, cancellation, and revocation of permits.
- 3-9-236. Permittees — Miscellaneous unlawful practices.
- 3-9-237. Disposition of funds.
- 3-9-238. Pari-mutuel mixed drink permit.

A.C.R.C. Notes. References to “this subchapter” in §§ 3-9-201 — 3-9-237 may not apply to §§ 3-9-227 and 3-9-228 which were enacted subsequently.

Publisher's Notes. Acts 1969, No. 132, § 20 provided that nothing in this subchapter (excluding § 3-9-226) should be construed to authorize the sale of alcoholic liquors or beer, or to allow the issuance of any permit therefor, in any ward or portion of a city, or in any county, or portion thereof, in which the sale of alcoholic liquors or beer is prohibited pursuant to local option election held under Initiated Act No. 1 of 1942. The section further provided that nothing in this subchapter (excluding § 3-9-226) should be deemed to

amend or repeal any of the provisions of Initiated Act No. 1 of 1942.

Cross References. Permit renewals generally, § 3-4-216.

Effective Dates. Acts 1935, No. 108, Art. 10: approved Mar. 16, 1935. Emergency clause provided: “Whereas, the repeal of the Eighteenth Amendment to the Constitution of the United States has created an emergency which requires immediate control of intoxicating liquors; and

“Whereas, the present state revenue does not meet the needs for the maintenance and development of the State Government and its agencies and the state's credit is threatened with impairment, an emergency is declared to exist and this act

shall become a law and be effective on its passage and approval or nonaction by the Governor."

Acts 1969, No. 132, § 21: Feb. 28, 1969. Emergency clause provided: "It is hereby found and determined by the General Assembly that additional general revenues are urgently required for the State Apportionment Fund to support programs vital to the health, education, welfare, and safety of the people of this state and that unless such funds are provided, curtailment of such programs will be necessary; that the expanded economic growth of this state is essential to providing the sources of tax revenue to support such program; that the provisions of this act will stimulate the tourist and convention business in this state and will provide increased revenues from existing taxes; that the revenues to be collected under this act are essential to continuing existing levels of governmental services; that the immediate passage of this act is essential, not only to provide vitally needed revenues, but also to clarify and modernize the laws of this state regarding the sale, dispensing, and serving of alcoholic beverages for on-premises consumption and to strengthen the enforcement of the alcoholic beverage laws of this state; and, that the immediate passage of this act is necessary to accomplish the purposes stated herein. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after the date of its passage and approval."

Acts 1971, No. 585, § 34: approved Apr. 6, 1971. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that in order to establish an orderly procedure which will insure the monthly and quarterly distribution of funds for the necessary services and operations of the state government, as provided for in this act, it is necessary that the provisions of this act become effective immediately; that under the provisions of this act seriously needed improvements for many of our public institutions are contemplated, and only the provisions of this act will provide such funds which will be adequate to alleviate this situation; and that only the provisions of this act will correct many of our financial difficul-

ties, and which otherwise may deprive the citizens of this state from receiving the benefits which the operation of state government contemplates. Therefore, an emergency is hereby declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall take effect and be in full force from and after its passage."

Acts 1973, No. 387, § 3: Mar. 19, 1973. Emergency clause provided: "It is hereby found and determined by the General Assembly that a situation of uncertainty exists in which there is a need for clarification of the existing governing powers of municipalities, and that such uncertainty should be resolved immediately in such way as to encourage the attraction of tourists to the State of Arkansas, safeguard the morals of our citizenry, and confirm the principal of local autonomy, and that this act is designed to accomplish this purpose and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1975, No. 137, § 3: became law without Governor's signature, Feb. 10, 1975. Emergency clause provided: "It is hereby found and determined by the General Assembly that in counties of this state having a population of not less than 53,000 nor more than 58,000 there are hotels and restaurants which are licensed to dispense alcoholic beverages for consumption on the premises, and that there is some confusion as to what agency or body has the authority to regulate the closing hours of said licensed premises; that the law is clear that when such hotels or restaurants are located within the municipality, the governing body of such municipality may regulate the closing hours of the premises, but there are no specific provisions with respect to the closing hours of such licensed premises located within such county and outside the boundaries of any municipal corporation; that this act is designed to vest the county court of the county with the authority to establish closing hours for such licensed premises located in such counties outside the boundaries of municipalities, and that the act should be given effect immediately to clarify such confusion and to specifi-

cally vest such authority in the county court. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1983, No. 420, § 3: Mar. 13, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that permits issued by the Alcoholic Beverage Control Division should be renewable annually no later than August 31; and that this act is immediately necessary to so provide. Therefore, an emergency is hereby declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1983, No. 844, § 7: May 1, 1983. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that the collection of state general revenues during the current fiscal year has diminished to such extent that the activities of certain necessary agencies of the state government are being and will continue to be curtailed, and that the provisions of this act will aid in the correction of a situation which otherwise will deprive the citizens of this state from receiving benefits which the operation of state government contemplates. Therefore, this act being necessary for the preservation of the public health and safety shall take effect and be in full force effective May 1, 1983."

Acts 1985, No. 384, § 3: Mar. 18, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly that only nonprofit corporations organized under the laws of this state should be eligible to obtain private club permits; that it is essential to the effective and efficient enforcement of the alcoholic beverage laws that such restrictions be given effect at the earliest possible date; that this act is designed to establish such restrictions and to clarify the laws relating to the qualifications of nonprofit corporations to obtain such permits, and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 949, § 3: Apr. 13, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that because of the case *Ricarte v. State*, CR 86-31, a question has arisen over the validity of Act 1016 of the Extended Session of 1976; that this Act is a reenactment of the former law; and that the immediate passage of this Act is necessary to clarify the state of the law on this issue. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1989, No. 837, § 5: Mar. 22, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that the term 'restaurant' as used in the laws relating to the service of alcoholic beverages for on premises consumption is in urgent need of clarification to assure the effective administration of such laws; that this act is designed to provide such clarification and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 606, § 14: July 1, 1991. Emergency clause provided: "It is hereby found and determined that numerous persons who are resident aliens of the United States desire to operate establishments that dispense alcoholic beverages in the State of Arkansas and that the same are presently prohibited from obtaining a license in their name. It is further found and determined that the requirement of United States citizenship in order to maintain these establishments poses a burden upon commerce and restricts the number of persons who are able to contribute to the overall economy of the State of Arkansas. It is further found and determined that numerous national corporations are hindered in their operations in that they cannot have newly transferred managers or other key employees assume positions of responsibility within their local outlets since those persons do not meet the two (2) year residency requirement and that such requirement poses an unreasonable burden on the conduct of business in this state as it relates to alcohol

beverage outlets. It is further found that the present process of applying for or renewing ABC licenses by requiring proof of payment of personal property taxes is cumbersome, unnecessary, and has no direct relationship to the operation of the ABC permitted outlet. It is further found and determined that there are presently numerous conflicting requirements which are applied to applicants for various retail licenses issued by the state ABC Division and that it is necessary and proper that such permit requirements be made uniform. That all of the aforementioned encumbrances are a burden on the transaction of commerce in the state and upon the efficient administration of government in the state. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect on and after July 1, 1991."

Acts 1995, No. 563, § 10: emergency failed to pass. Emergency clause provided: "It is hereby found and determined by the General Assembly that although the sale of alcoholic beverages on Sunday is permitted in some cities of this State, even in those cities the sale of beer and wine is not permitted on Sunday; that it is fundamentally unfair to authorize the Sunday sale of mixed drinks but to prohibit the Sunday sale of beer and wine; that this act would provide equal protection to the purveyors of beer and wine; that to give immediate effect to this act will lessen the possibility of a challenge to the present law allowing the Sunday sale of mixed drinks, and thereby save the taxpayers the cost involved in defending the challenge and the cost of an unsuccessful defense; and that, therefore, this act should go into effect immediately. Therefore, an emergency is hereby declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1995, No. 600, § 5: Mar. 13, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that under conditions prescribed by the Alcoholic Beverage Control Division persons permitted to serve alcoholic beverages on the premises of a hotel, mo-

tel or restaurant should be authorized to serve alcoholic beverages at a large meeting or attendance facility; that this act so provides; and this act should go into effect as soon as possible in order to make more efficient the convention planning process in this state. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1999, No. 910, § 4: effective on and after July 1, 1999.

Acts 1999, No. 910, § 8: July 1, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly that the mixed drink tax bonding requirement is putting unnecessary hardship on the taxpayers in this state; that the current ABC renewal system prevents taxpayers from renewing their liquor permits if all tax obligations have not been fully satisfied; that the bonding requirement only serves to increase taxpayers' cost of doing business without providing any significant benefit to the state. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on July 1, 1999."

Acts 1999, No. 1371, § 5: Apr. 12, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-Second General Assembly that the provisions of this Act are of critical importance to the State of Arkansas and its business community. The State of Arkansas is losing businesses to other states due to the restrictions imposed on selling liquor in wet counties. The provisions of this Act are necessary to ensure that the restaurant industry in Arkansas stays in Arkansas and expands its business in this state. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2005, No. 445, § 2: Mar. 2, 2005. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the ability of a professional baseball facility to operate efficiently and effectively is hindered by existing laws governing the sale and purchase of alcoholic beverages; that baseball season will begin in a very short period of time; and that this act is immediately necessary to enable professional baseball facilities to immediately begin preparation for baseball season. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2007, No. 1017, § 4: Apr. 3, 2007. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that current laws concerning the sale of alcoholic beverages at certain large attendance facilities enact a financial hardship on those facilities; and that a revision to Arkansas law is necessary to ease those hardships and provide a more equitable system of selling alcoholic beverages on certain days and times. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

CASE NOTES

Applicability.

This subchapter does not, either expressly, by implication, or by operable effect, amend or violate § 3-8-201 et seq.

Morris v. Torch Club, Inc., 295 Ark. 461, 749 S.W.2d 319 (1988).

Cited: *Jones v. Reed*, 267 Ark. 237, 590 S.W.2d 6 (1979).

3-9-201. Legislative determinations and intent.

(a) The General Assembly reaffirms the policy of this state of strict enforcement of alcoholic beverage control laws and further reaffirms the policy of this state that the qualified electors of any city, county, or political subdivision thereof shall have the right of local option pursuant to Initiated Act No. 1 of 1942, as amended, §§ 3-8-201 — 3-8-203 and 3-8-205 — 3-8-209, to prohibit the manufacture or sale of intoxicating liquor therein.

(b) The General Assembly further declares and recognizes the principle of freedom of choice of the people in any city or county in which the manufacture or sale of alcoholic beverages has not been prohibited to determine by a local referendum whether the sale of alcoholic beverages for on-premises consumption shall be authorized in the manner herein provided.

(c) The General Assembly authorizes and directs all law enforcement officials to enforce strictly the alcoholic beverage laws of this state.

(d) The General Assembly determines:

(1) That the tourist and convention industries contribute substantially to the revenues of business enterprises in this state and that

income from the tourist trade, conventions, and allied industries is essential to the continued well-being and prosperity of this state;

(2) That there is extreme competition among states throughout the nation for the tourist and convention business; and

(3) That all reasonable steps should be taken to retain, foster, and encourage this business and to create favorable competitive conditions therefor in this state.

(e) In order to encourage tourists and conventions to come to Arkansas, it is essential that visitors to the state be provided accommodations, services, and facilities of a nature to which they are accustomed and competitive with those offered in other states and areas and especially states adjacent to Arkansas.

(f) It is the intent and purpose of this subchapter to authorize the qualified electors of cities and counties in which the sale of alcoholic beverages is not prohibited by law to approve, by referendum election, the legal sale of alcoholic beverages for consumption on the premises of restaurants, hotels, and motels as defined herein.

History. Acts 1969, No. 132, § 1; A.S.A. 1947, § 48-1401.

CASE NOTES

Applicability of Other Laws.

A policy declaration that liquor laws should be strictly enforced is not a legislative declaration requiring the application of all existing statutes governing intoxicating liquor permits to the "on-premises consumption" type of permit. The General Assembly's directive that the board, in adopting rules and regulations governing qualifications for permits and otherwise implementing and effectuating

the purposes of the acts, be guided by rules and regulations applicable to retail liquor licenses "insofar as pertinent" does not require application of the laws governing liquor permits generally. *Jones v. Reed*, 267 Ark. 237, 590 S.W.2d 6 (1979).

Cited: *Tiffany's Restaurants, Inc. v. City of Little Rock*, 280 Ark. 402, 658 S.W.2d 394 (1983); *Henard v. St. Francis Election Comm.*, 301 Ark. 459, 784 S.W.2d 598 (1990).

3-9-202. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Board" means the Alcoholic Beverage Control Board of this state, or its successor agency;

(2) "Director" means the Director of the Alcoholic Beverage Control Division;

(3) "Alcoholic beverages" means all intoxicating liquors of any sort, other than beer and wine as described and regulated in §§ 3-5-301 — 3-5-307, and 3-9-301 et seq., respectively;

(4) "Initiated Act" means Initiated Act No. 1 of 1942, as amended, §§ 3-8-201 — 3-8-203 and 3-8-205 — 3-8-209, which establishes the procedure for local option elections to prohibit the manufacture or sale of intoxicating liquor;

(5) "Dry area" means any area in which the manufacture or sale of intoxicating liquor is prohibited by a local option election heretofore or hereafter held pursuant to the Initiated Act;

(6) "On-premises consumption" means the sale of alcoholic beverages by the drink or in broken or unsealed containers for consumption on the premises where sold;

(7) "City" means any city of the first class or city of the second class in this state;

(8) "Restaurant" means any public or private place:

(A)(i) Kept, used, maintained, advertised, and held out to the public or to a private or restricted membership as a place where complete meals are served and where complete meals are actually and regularly served, without sleeping accommodations, such a place being provided with adequate and sanitary kitchen and dining equipment and a seating capacity of at least fifty (50) people and having employed therein a sufficient number and kind of employees to prepare, cook, and serve suitable food for its guests or members.

(ii) At least one (1) meal per day shall be served, and the place shall be open a minimum of five (5) days per week, with the exception of holidays, vacations, and periods of redecorating; or

(B)(i) Which qualifies as a "large meeting or attendance facility", which is defined, without limitation, as a facility housing convention center activity, tourism activity, trade show and product display and related meeting activity, or any other similar large meeting or attendance activity and which either itself or through one (1) or more independent contractors complies with all of the following:

(a) Actually serves full and complete meals and food on the premises;

(b) Has one (1) or more places for food service on the premises with a seating capacity for not fewer than five hundred (500) people;

(c) Employs a sufficient number and kind of employees to serve meals and food on the premises capable of handling at least five hundred (500) people; and

(d) Serves alcoholic beverages on the premises at one (1) or more places only on days that meals and food are served at one (1) or more places on the premises.

(ii)(a) Any on-premises restaurant permittee as licensed by § 3-9-202(8)(A) and any hotel or motel on-premises permittee as licensed by § 3-9-202(9) shall be allowed to serve alcoholic beverages purchased under its permit at any large meeting or attendance facility which is licensed under this subdivision (8)(B). Hotel, motel, and restaurant permittees may serve alcoholic beverages purchased under their permits only when they have first secured written permission from the permittee of the large meeting or attendance facility. Otherwise, alcoholic beverage service at the large meeting or attendance facility shall be from inventory purchased by the large meeting or attendance facility permittee.

(b) Written permission shall not be granted for more than a five-day period. The Alcoholic Beverage Control Division shall be

given a copy of any such written agreement. Any violations which occur while such permission is being used shall lie against the hotel, motel, or restaurant using such permission.

(c) Any hotel, motel, or restaurant that serves its alcoholic beverages at a large meeting or attendance facility shall only do so pursuant to a satellite catering permit to be issued by the division for an annual fee of five hundred dollars (\$500) per fiscal year or part thereof. The permit shall be applied for on forms as prescribed by the board.

(d) The board shall promulgate such regulations as it deems necessary to implement subdivisions (8)(B)(ii)(a)-(c) of this section;

(iii) When a large attendance facilities permit has been issued to a government-owned facility located in a county that has a population of more than one hundred fifty-five thousand (155,000) according to the 2000 Federal Decennial Census, Arkansas-licensed beer wholesalers shall be allowed to pay for advertising devices used at the government-owned facility. Such advertising devices shall include items such as inside or outside signs, scoreboards, programs, scorecards, and the like. Provided, if such advertising by the beer wholesaler results in the formation or existence of an exclusive buying arrangement by the large attendance facilities permittee and the wholesaler who furnishes such items, then such an exclusive buying arrangement will be a violation of the large attendance facilities permit and the wholesale beer permit involved even if the arrangements are caused by third parties. To the extent that § 3-5-214 or any other law could be interpreted to preclude such advertising arrangements allowed in this subdivision (8)(B)(iii), they are held inapplicable;

(iv)(a) When a large attendance facilities permit has been issued to a facility owned or operated by the owner of a professional sports team franchised by Minor League Baseball and within a county that has a population of more than one hundred fifty-five thousand (155,000) according to the 2000 Federal Decennial Census, the operator of the facility may accept sponsorship funds, advertising items, or promotional items from licensed beer wholesalers. Promotional items shall include items used by the facility to promote attendance.

(b) However, if the use of sponsorship funds, advertising items, or promotional items by the beer wholesaler results in the formation or existence of an exclusive buying arrangement by the large attendance facilities permittee and the wholesaler who furnishes the sponsorship funds, advertising items, or promotional items, then the exclusive buying arrangement will be a violation of the large attendance facilities permit and the wholesaler's wholesale beer permit even if the arrangements are caused by third parties.

(c) Section 3-5-214 or any other law that could be interpreted to preclude arrangements to use the sponsorship funds, advertising items, or promotional items allowed in this subdivision (8)(B)(iv) shall not apply to this subdivision (8)(B)(iv);

(9) "Hotel" means every building or other structure commonly referred to as a hotel, motel, motor hotel, motor lodge, or by similar name, which is kept, used, maintained, advertised, and held out to the public to be a place where food is actually served and consumed and sleeping accommodations are offered for adequate pay to travelers or guests, whether transient, permanent, or residential, in which fifty (50) or more rooms are used for the sleeping accommodations of such guests, and having one (1) or more public dining rooms with adequate and sanitary kitchen facilities, and a seating capacity for at least fifty (50) persons, where meals are regularly served to such guests, such sleeping accommodations and dining room being conducted in the same building or in separate buildings or structures used in connection therewith that are on the same premises and are a part of the hotel operation;

(10)(A)(i) "Private club" means a nonprofit corporation organized and existing under the laws of this state, no part of the net revenues of which shall inure directly or indirectly to the benefit of any of its members or any other individual, except for the payment of bona fide expenses of the club's operations, and which is conducted for some common recreational, social, patriotic, political, national, benevolent, athletic, community hospitality, professional association, entertainment, or other nonprofit object or purpose other than the consumption of alcoholic beverages.

(ii) The nonprofit corporation shall have been in existence for a period of not less than one (1) year before applying for a permit, as prescribed in this subchapter.

(iii) At the time of application for the permit, the nonprofit corporation must have not fewer than one hundred (100) members and at the time of application must own or lease, be the holder of a buy-sell agreement or offer and acceptance, or have an option to lease a building, property, or space therein for the reasonable comfort and accommodation of its members and their families and guests and restrict the use of club facilities to those persons.

(B) For purposes of this subdivision (10), a person shall be required to become a member of the private club in any wet area of the state only upon ordering an alcoholic beverage as defined under subdivision (3) of this section.

(C) Furthermore, where the business entity that holds a private club permit additionally holds a retail beer permit, retail wine for consumption on the premises permit, or cafe or restaurant wine permit, the hours of operation authorized for the private club shall likewise apply to all permits of the business entity;

(11) "Referendum election" means an election held as provided in this subchapter, at which the electors of a city or county shall vote on the question of authorizing, as provided herein, the sale of alcoholic beverages for on-premises consumption in those areas of the city or county in which the lawful sale of alcoholic beverages has not been prohibited by a local option election held pursuant to the Initiated Act;

(12) "Person" means any natural person, partnership, association, or corporation; and

(13) "Bed and breakfast private club" means a corporation, partnership, individual, or limited liability corporation whose primary function is to provide overnight accommodations to the public, not exceeding a total of twenty (20) guest rooms on the premises, whether operated by the business owner or not, where the owner or a person representing the owner lives on the premises, where a breakfast meal is served to the lodging guest, and where no restaurant on the premises is open to the public except for the lodging guest.

History. Acts 1969, No. 132, § 2; 1985, No. 384, § 1; A.S.A. 1947, § 48-1402; Acts 1989, No. 295, § 3; 1989, No. 837, § 1; 1989, No. 953, § 1; 1993, No. 403, § 2; 1995, No. 536, § 2; 1995, No. 600, § 1; 1999, No. 1063, § 1; 1999, No. 1371, § 1; 1999, No. 1597, § 1; 2003, No. 369, § 1; 2003, No. 1813, § 1; 2005, No. 445, § 1; 2007, No. 642, § 1.

A.C.R.C. Notes. Since the 1989 amendments to present subdivision (8)(A) of this section were substantively the same and

varied only in style, the subdivision as amended by Acts 1989, No. 837, § 1 has been set out.

Amendments. The 2005 amendment substituted "§ 3-5-214" for "§ 3-5-314" in (8)(B)(iii); and added (8)(B)(iv).

The 2007 amendment, in (8)(B), substituted "one hundred fifty-five thousand (155,000)" for "three hundred thousand (300,000)" in (iii) and (iv)(a), and substituted "2000" for "1999" in (iii).

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2003 Arkansas General As-

sembly, Alcoholic Beverages, 26 U. Ark. Little Rock L. Rev. 349.

CASE NOTES

ANALYSIS

Foreign Wines.
Private Clubs.

Foreign Wines.

Foreign wines are included within the meaning of "alcoholic beverages" as stated in subdivision (3) of this section since it is obvious that the term embraces all intoxicating liquors of any sort except beer and native wine. *Tiffany's Restaurants, Inc. v. City of Little Rock*, 280 Ark. 402, 658 S.W.2d 394 (1983).

Private Clubs.

The prohibition of § 3-4-206 would not apply to the transfer of a private club permit for dispensation of alcoholic beverages by the drink or in broken or unsealed

containers for consumption on the premises. *Jones v. Reed*, 267 Ark. 237, 590 S.W.2d 6 (1979).

Where an applicant was not a non-profit organization with requisite number of dues-paying members which had been in existence for statutory period but had obtained a two year old charter from another county, amended it to change the address, and sold prospective memberships with no definite immediate purpose other than the consumption of alcoholic beverages, the applicant was not eligible to obtain a permit to sell alcoholic beverages in a dry county. *Lassiter v. Kesterson*, 284 Ark. 498, 683 S.W.2d 613 (1985).

Cited: *Arkansas ABC Bd. v. King*, 275 Ark. 308, 629 S.W.2d 288 (1982); *Fontana v. Gunter*, 11 Ark. App. 214, 669 S.W.2d 487 (1984).

3-9-203. Applicability — Purpose and effect of referendum election.

(a) The provisions of this subchapter authorizing on-premises consumption shall be effective only in cities and counties, or portions

thereof, in which the manufacture or sale of intoxicating liquor is not prohibited as a result of a local option election held pursuant to Initiated Act No. 1 of 1942, and in which the sale of alcoholic beverages for on-premises consumption has been approved by a majority vote at a referendum election as herein provided.

(b) A favorable vote at a referendum election shall authorize on-premises consumption in licensed premises, as provided in this subchapter, in only those areas of the city or county which are not dry areas.

(c)(1) A referendum election held in a city shall be for the purpose of determining whether the sale of alcoholic beverages for on-premises consumption shall be authorized in the portions of the city in which the sale of alcoholic beverages is not otherwise prohibited by law.

(2) A referendum election held in a county shall be for the purpose of determining whether the sale of alcoholic beverages for on-premises consumption shall be authorized in all areas of the county, including cities of the first class and second class and incorporated towns therein, in which the sale of alcoholic beverages is not otherwise prohibited by law.

History. Acts 1969, No. 132, § 3; A.S.A. 1947, § 48-1403.

3-9-204. Penalties.

(a) Any person who shall violate any provision of §§ 3-9-201 — 3-9-214, 3-9-221 — 3-9-225, and 3-9-232 — 3-9-237 shall be guilty of a Class A misdemeanor.

(b) Each violation shall constitute a separate offense.

(c) The Director of the Department of Finance and Administration shall have the authority to suspend, cancel, or revoke the permit of any permittee so convicted.

History. Acts 1969, No. 132, § 16; A.S.A. 1947, § 48-1416; Acts 2005, No. 1994, § 336.

Amendments. The 2005 amendment, in (a), inserted "Class A" and deleted "and

upon conviction may be fined not more than one thousand dollars (\$1,000) and, in the discretion of the court, imprisoned for not more than six (6) months" from the end.

3-9-205. Rules and regulations — Police power of state and local governments.

(a) The Alcoholic Beverage Control Board is authorized to adopt and enforce reasonable rules and regulations governing the qualifications for permits hereunder, the operation of licensed premises, and otherwise implementing and effectuating the provisions and purposes of this subchapter and, in so doing, shall be guided, insofar as pertinent, by rules and regulations now or hereafter applicable to retail liquor outlets.

(b) Nothing in this subchapter, however, shall be construed as limiting the power of other proper state or local governmental bodies to

regulate the operation of establishments under this subchapter as may be necessary for the protection of public health, welfare, safety, and morals.

History. Acts 1969, No. 132, § 12; 1973, No. 387, § 1; 1975, No. 137, § 1; A.S.A. 1947, § 48-1412.

CASE NOTES

ANALYSIS

Applicability of Other Laws.
Hours of Operation.

Applicability of Other Laws.

The policy declaration of § 3-9-201 that liquor laws should be strictly enforced is not a legislative declaration requiring the application of all existing statutes governing intoxicating liquor permits to the “on-premises consumption” type of permit, and the General Assembly’s directive that the board, in adopting rules and regulations governing qualifications for permits and otherwise implementing and effectuating the purposes of the acts, be guided by rules and regulations applicable to retail liquor licenses, “insofar as pertinent,” does not require application of the laws governing liquor permits generally. *Jones v. Reed*, 267 Ark. 237, 590 S.W.2d 6 (1979).

Hours of Operation.

A city had the authority to enact an ordinance regulating the sale or consump-

tion of mixed drinks at private clubs during certain hours of the day, since the state had not preempted the subject by statute or regulation, and this section provides that nothing in this section shall be construed to limit the power of local governmental bodies to regulate the operation of private clubs. *Tompos v. City of Fayetteville*, 280 Ark. 435, 658 S.W.2d 404 (1983).

The mere fact that the Alcoholic Beverage Control Board had never exercised its regulatory authority under this section by adopting specific operating hours for private clubs did not mean that private clubs had the right to remain open and serve or permit consumption of alcohol 24 hours a day; accordingly, a city ordinance prohibiting private clubs from serving or allowing consumption of mixed drinks between certain hours was enacted for the protection of public health, welfare, safety, and morals, and was not in conflict with the general law of the state. *Tompos v. City of Fayetteville*, 280 Ark. 435, 658 S.W.2d 404 (1983).

3-9-206. Referendum elections — Conduct.

(a) A referendum election hereunder shall be conducted in accordance with the following:

(1) A referendum election may be called in a city by resolution adopted by a majority vote of the governing body of the city or by petition filed with the city clerk signed by qualified electors of the city numbering not less than fifteen percent (15%) of the votes cast in the city for the office of Governor in the last general election in which the office appeared on the ballot;

(2) A referendum election may be called in a county by resolution adopted by a majority vote of the quorum court at any annual or special session thereof, or by petition filed with the county clerk signed by qualified electors of the county numbering not less than fifteen percent (15%) of the votes cast in the county for the office of Governor in the last general election in which the office appeared on the ballot.

(b)(1) The election shall be called by order of the quorum court in accordance with § 7-5-103(b) and held and conducted in accordance with § 7-5-103(b) and the results certified under the supervision of the county board of election commissioners in the manner provided by the election laws of this state.

(2) The order of the quorum court shall fix the date of the election not more than ninety (90) days from the date of the order and give notice thereof by publication in a newspaper of general circulation in the city or county by at least two (2) insertions, the last being not less than ten (10) days prior to the election.

(3) The county board shall tabulate the votes and certify the results to the county clerk within ten (10) days after the election.

(c) The election shall be conducted on a citywide or countywide basis. All qualified electors within the city or county, as the case may be, shall be eligible to vote even though they reside in a dry area thereof.

(d) On the ballot for the election shall be printed substantially the following:

FOR THE SALE OF ALCOHOLIC BEVERAGES FOR
ON-PREMISES CONSUMPTION IN (NAME OF CITY
OR COUNTY), ARKANSAS, AS AUTHORIZED IN AR-
KANSAS CODE § 3-9-201 ET SEQ. ☐

AGAINST THE SALE OF ALCOHOLIC BEVERAGES
FOR ON-PREMISES CONSUMPTION IN (NAME OF
CITY OR COUNTY), ARKANSAS, AS AUTHORIZED IN
ARKANSAS CODE § 3-9-201 ET SEQ. ☐

(e) The results of the election may be contested within the time and in the manner provided by law.

(f) All matters concerning the sufficiency of the petitions and the conduct of the election not specifically provided for herein shall be determined in accordance with the initiative and referendum laws of this state applicable to cities and counties, respectively.

History. Acts 1969, No. 132, § 4; A.S.A. 1947, § 48-1404; Acts 1997, No. 1010, § 5; 1997, No. 1060, § 5; 2001, No. 1475, § 5; 2005, No. 2145, § 2; 2007, No. 1049, § 3.

Amendments. The 2005 amendment added (b)(2)(B).

The 2007 amendment rewrote (b).

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of ssembly, Election Law, 24 U. Ark. Little Rock L. Rev. 465.

3-9-207. Referendum elections — Effect.

(a) In the event a majority of those voting in a referendum election under this subchapter shall vote for on-premises consumption, then permits may be issued by the Alcoholic Beverage Control Board to

eligible hotels and to restaurants located in other than dry areas of the city or county and which otherwise comply with the provisions of this subchapter.

(b) In the event a majority of those voting in a referendum election under this subchapter shall vote against on-premises consumption, an election shall not be held again on the issue in the same voting district for a period of one (1) year. However, an adverse vote in a countywide election shall not prohibit the calling of an election in a city in such county, nor shall an adverse vote in a city election prohibit the calling of an election in the county.

(c) Successive referendum elections may be held in the same city or county to reverse the result of a previous election. However, there shall be a period of not less than one (1) year between each such election.

(d) After a referendum election has initially been held, subsequent elections in the same city or county shall be held at the regular biennial November general election.

History. Acts 1969, No. 132, § 4; A.S.A. 1947, § 48-1404.

3-9-208. Subsequent local option elections.

(a) If a dry city or county shall subsequently vote at a local option election held pursuant to the Initiated Act No. 1 of 1942 for the manufacture or sale of intoxicating liquors, a referendum election under this subchapter may not be held in such city or county for a period of six (6) months thereafter.

(b) If a city or county has approved the sale of alcoholic beverages for on-premises consumption and dry areas within the city or county thereafter vote for the manufacture or sale of intoxicating liquors at a local option election pursuant to the Initiated Act, a referendum election under this subchapter need not be held again in the formerly dry areas, but permits may not be issued for on-premises consumption in such areas for a period of one (1) year thereafter.

(c) If permits are issued hereunder in a city or county which subsequently prohibits the manufacture or sale of intoxicating liquors at a local option election pursuant to the Initiated Act, then all permits shall be deemed automatically revoked and shall be returned to the Alcoholic Beverage Control Board forthwith.

History. Acts 1969, No. 132, § 4; A.S.A. 1947, § 48-1404.

3-9-209. Sales without permit prohibited.

It shall be unlawful and constitute a Class A misdemeanor for any person not holding a valid permit issued hereunder to sell alcoholic beverages for on-premises consumption.

History. Acts 1969, No. 132, § 15; **Amendments.** The 2005 amendment A.S.A. 1947, § 48-1415; Acts 2005, No. inserted "Class A." 1994, § 194.

3-9-210. Permit to sell beverages — Issuance.

(a)(1) Any hotel or restaurant as defined in § 3-9-202 desiring to sell alcoholic beverages for on-premises consumption shall make application to the Director of the Alcoholic Beverage Control Division for a permit upon forms prescribed and furnished by the director and in accordance with the rules and regulations of the Alcoholic Beverage Control Board.

(2)(A) If the hotel or restaurant is owned by a partnership, whether regular or limited, a nonpartner manager or operator may be issued the permit provided that he or she meets the other qualifications required by this section.

(B) The failure of one (1) or more partners to be residents of this state shall not be grounds for denial of the permit.

(b) No applicant shall be authorized to make any such sales until a permit is approved and issued by the director.

(c) The board shall have authority to require an applicant, under oath, to disclose the following information:

(1) The name of the applicant;

(2) Location of the hotel or restaurant;

(3) Sufficient data to establish that the applicant meets the requirements of § 3-9-202;

(4) The names and addresses of all owners of the hotel or restaurant;

(5) That the applicant is a citizen or resident alien of the United States and a resident of Arkansas on the date of application, and if a corporation, duly qualified to do business in this state;

(6) That neither the applicant nor any person to be employed in the serving of beverages authorized herein shall be a person who has been convicted within five (5) years of the date of his or her employment of any violation of the laws against possession, sale, manufacture, or transportation of intoxicating liquor, or convicted of a felony;

(7) That the manager or operator of the hotel or restaurant seeking the permit is of good moral character and not a convicted felon; and

(8) Such other relevant information as may be required.

(d) Every permit issued under this subchapter shall be for an indeterminate period, subject to compliance with the annual renewal requirements herein prescribed and shall not be transferable or assignable, as to owner or premises, except upon the written approval of the director.

History. Acts 1969, No. 132, § 5; A.S.A. 1947, § 48-1405; Acts 1991, No. 606, § 7; 1997, No. 222, § 1.

Publisher's Notes. Acts 1991, No. 606, § 11, provided: "It is the intent of this law to no longer require citizenship of the

United States in order for a person to hold certain ABC licenses and to eliminate the requirement that persons be a resident of the State of Arkansas for two (2) years prior to the time that they make application for an ABC license. It is also the

intent of this law that persons no longer be required to be registered voters in the county in which the permit is located and it is further intended that a person must either reside in the county where the premises is located or live within twenty-five (25) miles of the address of the permitted outlet. It is also the intent of this legislation that proof of payment of personal property taxes to the individual counties will no longer be required in

order for a person to apply for or renew an ABC license. It is the further intent of this law that various application requirements regarding convicted felon status, status as it relates to violation of liquor laws of this state or any other state and revocation of permits shall be made uniform among various permits issued by the ABC Division. Therefore, any laws that may conflict with this act shall be and the same hereby are repealed."

3-9-211. Permit to sell beverages — Scope — Effect on other laws.

(a) Any permit to sell alcoholic beverages for on-premises consumption shall include authority to sell beer for consumption on the same premises, and the provisions of § 3-5-307(7) and (8) shall not apply to premises covered by a permit issued under this subchapter.

(b) An on-premises consumption permit shall not authorize the selling or dispensing of alcoholic beverages by the package or bottle.

(c)(1) Any permit to sell alcoholic beverages for on-premises consumption shall also include authority to sell native and imported wine by the drink.

(2) However, nothing in this subchapter shall repeal subchapter 3 of this chapter regarding the licensing of restaurants to sell wines as authorized in those sections.

(3) It is the intent hereof that a permit issued under this subchapter for sale of alcoholic beverages for on-premises consumption shall include authority to sell native or imported wines by the drink on the licensed premises, but any restaurant not wishing to obtain a license under this subchapter may obtain a license under subchapter 3 of this chapter to sell wines as authorized therein.

History. Acts 1969, No. 132, § 17;
A.S.A. 1947, § 48-1417.

CASE NOTES

Cited: Tiffany's Restaurants, Inc. v. City of Little Rock, 280 Ark. 402, 658 S.W.2d 394 (1983).

3-9-212. Permit to sell beverages — Fees.

(a) Each application for a permit shall be accompanied by a permit fee in the following applicable amount:

Hotel, having fewer than 100 rooms	\$ 500
Hotel, having 100 or more rooms	1,000
Restaurant, having a seating capacity of less than 100 persons	500

Restaurant, having a seating capacity of 100
or more persons 1,000

(b) An annual renewal fee in the same amount as provided in subsection (a) of this section shall be paid to the Director of the Alcoholic Beverage Control Division on or before June 30 of each calendar year for the fiscal year beginning July 1.

(c) The fee for a permit issued between January 1 and July 1 shall be one-half ($\frac{1}{2}$) of the applicable amount specified in subsection (a) of this section.

History. Acts 1969, No. 132, § 7; 1983, No. 420, § 1; A.S.A. 1947, §§ 48-313.1, 48-1407.

3-9-213. Gross receipts and supplemental taxes on sale of alcoholic beverages.

(a) The sale of alcoholic beverages pursuant to this subchapter shall be subject to the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., as amended.

(b)(1) In addition, there is levied a supplemental tax of ten percent (10%) upon the gross proceeds or gross receipts from the sale of alcoholic beverages pursuant to this subchapter.

(2)(A) In addition to the tax levied under subdivision (b)(1) of this section, a supplemental tax of four percent (4%) is levied on the gross proceeds or gross receipts from the sale of alcoholic beverages under this subchapter.

(B) However, the tax levied under subdivision (b)(2)(A) of this section shall not apply to gross proceeds or gross receipts from the sale of beer or wine.

(c)(1) The supplemental tax shall be reported and paid to the Director of the Department of Finance and Administration in the same manner and at the same time as the gross receipts tax and shall be subject to such reasonable rules and regulations as the director may prescribe, including the maintenance of permanent records showing all purchases and sales of alcoholic beverages.

(2)(A) The tax levied under subdivision (b)(2) of this section shall be credited as special revenues to the University of Arkansas Medical Center Fund.

(B)(i) The funds credited under subdivision (c)(2)(A) of this section shall be used exclusively for making loan repayments for construction projects authorized by Acts 1989 (1st Ex. Sess.), No. 261, until the loan is paid in full.

(ii) After the Chancellor of the University of Arkansas for Medical Sciences certifies in writing to the Chief Fiscal Officer of the State that the loan has been repaid in full, then revenue from the tax collected under subdivision (b)(2) of this section may be used for any purpose authorized by law.

(d) The taxes herein prescribed may be passed on to the consumer and shall be in lieu of all other special taxes at the retail level.

(e) Wine shall not be defined as a mixed drink for the purposes of §§ 3-9-221 — 3-9-225 and shall not be subject to the supplemental tax of twelve percent (12%).

(f)(1) The Department of Finance and Administration shall notify the city or county of an audit for the supplemental tax on the sale of alcoholic beverages consumed on the premises if:

(A) The department audits a taxpayer;

(B) The department makes an assessment related to the audit against the taxpayer; and

(C) The taxpayer operates in a city or county that imposes a supplemental tax on the sale of alcoholic beverages consumed on the premises under § 3-9-214.

(2) The city or county may use this information to administer its supplemental tax on the sale of alcoholic beverages consumed on the premises.

(3) A city or county provided information under this subsection is subject to all of the confidentiality requirements of § 26-18-303.

History. Acts 1969, No. 132, § 8; 1983, No. 844, §§ 1, 5; A.S.A. 1947, §§ 48-1408, 48-1408n; Acts 1999, No. 910, § 1; 2003, No. 335, § 1; 2005, No. 1274, § 1.

A.C.R.C. Notes. Acts 1989 (1st Ex. Sess.), No. 261, § 3, as amended by Acts 2005, No. 1274, § 3, effective Jan. 1, 2006, that repeals subsection (A) provided that: "(A) In order to assist the University of Arkansas for Medical Sciences in making loan repayments, there is hereby levied an additional tax of four percent (4%) which shall be in addition to and shall be collected in the same manner as the supplemental tax imposed by Arkansas Code 3-9-213 on the gross proceeds or gross receipts from the sale of alcoholic beverages sold for on premises consumption and there is levied an additional tax of four percent (4%) which shall be in addition to and shall be collected in the same manner as the supplemental tax imposed by Arkansas Code 3-9-223 on the gross proceeds or gross receipts derived by a private club from the charges to members for the preparation and serving of mixed drinks only. Beer and wine sales are specifically exempt from the additional tax levied herein including those sales in 'wet' or 'dry' counties or parts thereof and those beer and wine sales in public or private establishments. The tax receipts shall be deposited as special revenues into the State Treasury and credited to the Uni-

versity of Arkansas Medical Center Fund to be used exclusively for making loan repayments for construction projects authorized by this Act. The tax levied herein shall be in effect only from the effective date of this Act through the final loan repayment made by the University of Arkansas for Medical Sciences. This Act gives no additional taxing authority to any municipality. The Chancellor of the University of Arkansas for Medical Sciences shall certify in writing to the Chief Fiscal Officer of the State when the final loan repayment has been made, who shall then notify the Commissioner of Revenues that the tax levied herein has expired. Any monies received after such date shall be deposited in the State Treasury to be credited to the State Central Services Fund.

"(B) Beginning two (2) years after any of the Research Facility is in use, twenty-five percent (25%) of the annual increase above such year in federal grant indirect cost reimbursements shall be computed and used exclusively for making loan repayments."

Acts 1995, No. 1065, § 3, provided: "Revenues derived from the additional taxes levied on alcoholic beverages in Section 3 of Act 261 of the First Extraordinary Session of 1989 and credited to the University of Arkansas Medical Center Fund to be used to repay loans made for

the construction of specified projects authorized in Act 261 shall continue to be used for the repayment of those loans, except that revenues derived from such taxes during the period from July 1, 1995 through June 30, 1997 shall be used exclusively to fund appropriations made by the Eightieth General Assembly to the University of Arkansas for Medical Sciences for the support of the Area Health Education Centers."

Acts 2005, No. 1274, § 3, provided: "Effective January 1, 2006, uncodified § 3(A) of Act 261 of the First Extraordinary Session of 1989 is repealed."

Publisher's Notes. The Arkansas Gross Receipts Act of 1941 referred to in

this section is codified as §§ 26-52-101 — 26-52-107, 26-52-201 — 26-52-208, 26-52-301, 26-52-303, 26-52-306, 26-52-307, 26-52-401, 26-52-402, 26-52-501 — 26-52-503, 26-52-508, 26-52-510.

Amendments. The 2005 amendment redesignated former (b) and (c) as present (b)(1) and (c)(1); in present (b)(1), substituted "ten percent (10%)" for "twelve percent (12%)" and deleted the former last sentence; and added (b)(2) and (c)(2).

Effective Dates. Acts 1999, No. 910, § 4, provided: "This Act shall be effective on or after July 1, 1999."

Acts 2005, No. 1274, § 1: effective by its own terms Jan. 1, 2006.

CASE NOTES

ANALYSIS

Special Taxes.
Wines.

Special Taxes.

No additional special tax, such as a hospitality tax, can be added to the mixed drink tax. *City of Hot Springs v. Vapors Theatre Restaurant*, 298 Ark. 444, 769 S.W.2d 1 (1989).

Wines.

Sales of foreign wines were not subject to the state and city supplemental taxes authorized by § 3-9-214 and this section, where the seller held both a wine permit and a mixed drink permit. *Tiffany's Restaurants, Inc. v. City of Little Rock*, 280 Ark. 402, 658 S.W.2d 394 (1983) (decision prior to 1983 amendment).

Cited: *Faull v. Heath*, 259 Ark. 145, 532 S.W.2d 164 (1976).

3-9-214. Supplemental tax or fee on sales levied by political subdivisions.

(a) An additional fee or supplemental tax as levied under §§ 3-9-212 and 3-9-213 may also be levied upon any permittee under this subchapter by a city or incorporated town in which the licensed premises are located, or by the county if located outside the limits of a city or incorporated town.

(b) However, in no event shall the fee or tax exceed the amount or rate provided in §§ 3-9-212 and 3-9-213.

(c) All fees and taxes levied hereunder shall be collected by the city or county and shall be used for city or county general purposes as authorized by law.

History. Acts 1969, No. 132, § 9; A.S.A. 1947, § 48-1409.

CASE NOTES

ANALYSIS

Foreign Wines.
Special Taxes.

Foreign Wines.

Sales of foreign wines were not subject to the state and city supplemental taxes authorized by § 3-9-213 and this section, where the seller held both a wine permit and a mixed drink permit. *Tiffany's Res-*

taurants, Inc. v. City of Little Rock, 280 Ark. 402, 658 S.W.2d 394 (1983) (decision prior to 1983 amendment to § 3-9-213).

Special Taxes.

No additional special tax, such as a hospitality tax, can be added to the mixed drink tax. *City of Hot Springs v. Vapors Theatre Restaurant*, 298 Ark. 444, 769 S.W.2d 1 (1989).

3-9-215. Authorization of Sunday sales.

(a)(1) The provisions of this section shall be applicable to only those cities and counties in this state in which the sale of alcoholic beverages for on-premises consumption in restaurants or hotels has been approved by a majority of the qualified electors of the city or county voting on the issue at a referendum election authorized by this subchapter. These provisions shall apply only with respect to the sale of alcoholic beverages in restaurants or hotels which have a valid and current license or permit to sell alcoholic beverages for consumption on the premises thereof.

(2) In no event shall this section be construed to authorize the sale of alcoholic beverages in any city or county or in any portion thereof in which the sale of alcoholic beverages is prohibited by law. Nothing in this section shall be construed to repeal or modify any law which prohibits the sale of intoxicating alcoholic liquor, beer, or wine on Sunday unless the law specifically conflicts with this section.

(b)(1) Any city of the first class or any county in which the sale of alcoholic beverages for on-premises consumption in licensed restaurants and hotels has been authorized by a majority of the qualified electors of that city or county voting on the issue at an election held therefor pursuant to the provisions of this subchapter, by ordinance adopted by the governing body of such city or county may refer to the voters at an election the issue of whether or not to authorize the sale of alcoholic beverages on Sundays between the hours of 12:00 noon and 10:00 p.m., or within a lesser period within such hours as may be provided in the ordinance.

(2) Provided, however, when Sunday falls on December 31 of any year, such restaurants and hotels may automatically sell alcoholic beverages for on-premises consumption between the hours of 12:00 noon on Sunday and 2:00 a.m. on the following Monday unless the city or county establishes by ordinance a lesser period of time within which alcoholic beverages may be sold for on-premises consumption by the restaurants and hotels.

(3) The Sunday sale of alcoholic beverages for on-premises consumption as authorized in this section shall be limited to those restaurants and hotels which possess a current and valid permit or license for the

sale of alcoholic beverages for on-premises consumption issued under the authority of § 3-5-301 et seq., this subchapter, and § 3-9-301 et seq. The election shall be held in accordance with the procedures established by § 3-9-201 et seq.

(4) On the ballot for the election shall be printed substantially the following:

[] FOR THE SALE OF ALCOHOLIC BEVERAGES FOR ON-PREMISES CONSUMPTION ON A SUNDAY IN QUALIFIED HOTELS AND RESTAURANTS IN (NAME OF CITY OR COUNTY), ARKANSAS, AS AUTHORIZED BY LAW.

[] AGAINST THE SALE OF ALCOHOLIC BEVERAGES FOR ON-PREMISES CONSUMPTION ON A SUNDAY IN QUALIFIED HOTELS AND RESTAURANTS IN (NAME OF CITY OR COUNTY), ARKANSAS, AS AUTHORIZED BY LAW.

History. Acts 1987, No. 115, §§ 1-3; 1995, No. 192, § 1; 1995, No. 563, §§ 1, 2; 1997, No. 1010, § 4; 1997, No. 1060, § 4.

A.C.R.C. Notes. Pursuant to § 1-2-207, this section is set out above as amended by Acts 1995, No. 536. Subsection (b) of this section was also amended by Acts 1995, No. 192, § 1, to read as follows: "(b) Any city of the first class or any county in which the sale of alcoholic beverages for on-premises consumption in licensed restaurants and hotels has been authorized by a majority of the qualified electors of that city or county voting on the issue at an election held therefor pursuant to the provisions of § 3-9-201 et seq., by ordinance adopted by the governing body of such city or county, may refer to the voters at an election the issue of whether to authorize the sale of alcoholic beverages

on Sundays between the hours of 12:00 noon and 10:00 p.m., or within a lesser period within such hours as may be provided in the ordinance. However, the Sunday sale of alcoholic beverages for on-premises consumption as authorized in this section shall be limited to those restaurants and hotels which possess a permit or license for sale of alcoholic beverages for on-premises consumption issued under the authority of § 3-9-201 et seq. The election shall be held in accordance with the procedures established by § 3-9-201 et seq."

Publisher's Notes. Acts 1995, No. 192 became law without the Governor's signature.

Acts 1997, No. 1010 became law without the Governor's signature.

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Survey—Miscellaneous, 10 U. Ark. Little Rock L.J. 593.

3-9-216. Authorization of sales on Sundays for certain large attendance facilities.

(a) Large attendance facilities under § 3-9-202(8)(B) in which pari-mutuel wagering has been authorized and which have a valid and current license or permit to sell alcoholic beverages for consumption on their premises may sell alcoholic beverages on Sundays between the hours of 12:00 midnight and 2:00 a.m. and on Sundays between the hours of 12:00 noon and 2:00 a.m. on the following Monday in addition to other times authorized by law for selling alcoholic beverages for consumption on the premises.

(b) This section shall not be construed to:

(1) Authorize the sale of alcoholic beverages in any city or county or in any portion of a city or county in which the sale of alcoholic beverages is prohibited by law; or

(2) Repeal or modify any law that prohibits the sale of intoxicating alcoholic liquor, beer, or wine on Sunday unless the law specifically conflicts with this section.

History. Acts 2007, No. 1017, § 2.

3-9-217 — 3-9-220. [Reserved.]

3-9-221. Private clubs — Exception from alcoholic beverage laws.

(a) The General Assembly recognizes that:

(1) Many individuals in this state serve mixed drinks containing alcoholic beverages to their friends and guests in the privacy of their homes and, in addition, that many individuals associated together in private nonprofit corporations established for fraternal, patriotic, recreational, political, social, or other mutual purposes as authorized by law, established not for pecuniary gain, have provided for their mutual convenience and for the preparation and serving to themselves and their guests mixed drinks prepared from alcoholic beverages owned by the members individually or in common under a so-called “locker”, “pool”, or “revolving fund” system; and

(2) Many individuals travel to this state to assemble at regional meetings and conventions to associate with other individuals who are members of professional and social organizations and that:

(A) Many of the restaurants and entertainment facilities used for the meetings and conventions promote the hospitality of the host communities where the restaurants, convention, and entertainment facilities are located;

(B) Many of the host organizations plan to serve mixed drinks containing alcoholic beverages to their friends and guests at these meetings and while entertaining and dining during these conventions; and

(C) Many of the host communities have individuals who have associated together in private nonprofit corporations established for recreational, social, community hospitality, professional association, entertainment, or other mutual purposes established, not for pecuniary gain, but for their mutual convenience and to provide for the preparation and serving to themselves and their guests mixed drinks prepared from alcoholic beverages owned by the members individually or in common under a so-called locker, pool, or revolving fund system.

(b)(1) In order to clarify the alcoholic beverage control laws of this state and to regulate and prohibit the sale of alcoholic beverages in violation of the provisions of this subchapter and other applicable alcoholic beverage control laws of this state, the General Assembly

determines that the preparation, mixing, and serving of mixed drinks, beer, and wine for consumption only on the premises of a private club as defined in § 3-9-202(10) by the members thereof and their guests and the making of a charge for such services shall not be deemed to be a sale or be in violation of any law of this state prohibiting the manufacture, sale, barter, loan, or giving away of intoxicating liquor whenever:

(A) The alcoholic beverages, beer, and wine so consumed have been furnished or drawn from private stocks thereof belonging to such members, individually or in common under a so-called locker, pool, or revolving fund system and are replenished only at the expense of such members; and

(B) The private club has acquired a permit from the Alcoholic Beverage Control Board, in such form as the board may appropriately determine.

(2)(A) A private club may serve any alcoholic beverage furnished or drawn under the provisions of subdivision (b)(1) of this section on the golf course on which the private club is located when the private club is hosting a professional golf tournament or other charitable golf tournament sponsored by a charitable organization described in 26 U.S.C. § 501(c)(3) and the Director of the Alcoholic Beverage Control Division has been notified by the private club at least sixty (60) calendar days prior to the beginning of the event.

(B) Persons attending the event shall be deemed guests of the private club, and the club may serve the alcoholic beverages to the guests for cash.

(C) The director may promulgate regulations he or she deems necessary to implement this subdivision (b)(2).

(c) In order to clarify the alcoholic beverage control laws of this state and to regulate and prohibit the sale of alcoholic beverages in violation of the provisions of this subchapter and other applicable alcoholic beverage control laws of this state, the General Assembly determines that the preparation, mixing, and serving of wine and beer for consumption only by the lodging guests on the premises of a bed and breakfast private club as defined in § 3-9-202(13) and the making of a charge for such services shall not be deemed to be a sale or to be in violation of any law of this state prohibiting the manufacture, sale, barter, loan, or giving away of intoxicating liquor whenever:

(1) The wine and beer so consumed have been furnished or drawn from private stocks belonging to an owner of the bed and breakfast private club and are replenished only at the expense of such owner;

(2) The wine and beer consumed must have been purchased in an Arkansas licensed retail alcoholic beverage store, as authorized by the director;

(3) The average annual volume of wine and beer consumed shall not exceed three (3) gallons per month per guest room; and

(4) The bed and breakfast private club has acquired a permit from the board in such form as the board may appropriately determine.

History. Acts 1969, No. 132, § 10; A.S.A. 1947, § 48-1410; Acts 1999, No. 1063, § 2; 2001, No. 584, § 1; 2003, No. 1813, § 2.

Amendments. The 2003 amendment

inserted the subdivision (a)(1) designation; in (a)(1), deleted "associations or" following "nonprofit," deleted "of" preceding "mixed drinks" and made minor stylistic changes; and added (a)(2).

CASE NOTES

Mandamus.

Mandamus was not the proper remedy where a petitioner was seeking an order for the Alcoholic Beverage Control Board to rescind and void all permits issued to private clubs pursuant to this subchapter because the constitutionality of this subchapter could be determined in a proceeding for declaratory judgment and because the petitioner was attempting to enforce

an alleged duty which was not a plain ministerial duty for which a writ of mandamus could issue. *Kemp-Bradford VFW Post 4764 v. Wood*, 262 Ark. 168, 554 S.W.2d 344 (1977).

Cited: *Jones v. Reed*, 267 Ark. 237, 590 S.W.2d 6 (1979); *Morris v. Torch Club*, 278 Ark. 285, 645 S.W.2d 938 (1983); *Green House, Inc. v. Arkansas ABC Div.*, 29 Ark. App. 229, 780 S.W.2d 347 (1989).

3-9-222. Private clubs — Procedure for obtaining permit.

(a) Application for a permit to operate as a private club may be made to the Director of the Alcoholic Beverage Control Division in accordance with the rules of the Alcoholic Beverage Control Board.

(b)(1) The application for a private club shall be accompanied by an annual permit fee of five hundred dollars (\$500).

(2) The application for a bed and breakfast private club shall be accompanied by an annual permit fee of seventy-five dollars (\$75.00).

(c)(1) After filing an acceptable application with the director, the applicant shall cause to be published at least one (1) time each week for four (4) consecutive weeks in a legal newspaper of general circulation in the city in which the premises are situated or, if the premises are not in a city, in a newspaper of general circulation for the locality where the business is to be conducted, a notice that the applicant has applied for a permit to dispense alcoholic beverages on the premises.

(2) The notice shall be in such form as the director shall prescribe by rule or order and shall be verified.

(3) The notice shall give the names of the managing agent and the nonprofit corporation or, in the case of a bed and breakfast private club, the name of the business owner, and shall state:

(A) That the manager, or in the case of a bed and breakfast private club, the owner, at least one (1) partner, or the majority stockholder is a citizen of Arkansas;

(B) That he or she is of good moral character;

(C) That he or she has never been convicted of a felony or had a license to sell or dispense alcoholic beverages revoked within the five (5) years preceding the date of the notice; and

(D) That he or she has never been convicted of violating the laws of this state or of any other state governing the sale or dispensing of alcoholic beverages.

(d)(1) Within five (5) days after filing an application for a permit to dispense alcoholic beverages on the premises, a notice of the application shall be posted in a conspicuous place at the entrance to the premises.

(2) The applicant shall notify the director of the date when the notice is first posted.

(3) No permit shall be issued to any applicant until proper notice has been so posted on the premises for at least thirty (30) consecutive days.

(4)(A) The notice shall be in such form as the director shall prescribe by rule or order.

(B) The notice shall be:

(i) At least eleven inches (11") in width and seventeen inches (17") in height; and

(ii) Printed in black lettering on a yellow background.

(e)(1) Upon receipt by the director of an application for a permit, written notice thereof, which shall include a copy of the application, the application shall immediately be mailed by the director to the sheriff, chief of police, if located within a city, prosecuting attorney of the locality in which the premises are situated, and city board of directors or other governing body of the city in which the premises are situated if within an incorporated area. The provisions of this section shall be retroactive to July 28, 1995.

(2) No license shall be issued by the director until at least thirty (30) days have passed from the mailing by the director of the notices required by this section.

(3) Upon receipt by the director within the thirty (30) days of a protest against the issuance of a permit by a governing official of the city or county to whom the notice of an application for permit has been mailed, the director shall not issue the license until he or she has held a public hearing.

(f) Upon the director's determining that the applicant is qualified hereunder and that the application is in the public interest, a permit may be issued as authorized in this section.

History. Acts 1969, No. 132, § 10; 1975 (Extended Sess., 1976), No. 1016, § 1; A.S.A. 1947, § 48-1410; reen. Acts 1987, No. 949, § 1; 1989, No. 297, § 1; 1997, No. 1010, § 3; 1997, No. 1060, § 3; 1999, No. 1063, § 3; 2007, No. 735, § 3.

A.C.R.C. Notes. This section was reenacted by Acts 1987, No. 949, § 1. Acts 1987, No. 834, provided that 1987 legislation reenacting acts passed in the 1976 Extended Session should not repeal any

other 1987 legislation and that such other legislation would be controlling in the event of conflict.

Amendments. The 2007 amendment deleted "and regulations" following "rules" in (a); substituted "four (4)" for "two (2)" in (c)(1); deleted "regulation" following "rule" in (c)(2) and (d)(4)(A); added (d)(4)(B); inserted "the application" preceding "shall" in (e)(1); and made related changes.

CASE NOTES

ANALYSIS

Appeal.

Burden of Proof.

Denial of Permit.

Factors Considered.

Grant of Permit.

Mandamus.

Transfers.

Appeal.

A finding that a private club permit is not in the public interest is not supported by substantial evidence if that finding is based solely on the number, or official position of, the persons who oppose it. *Green House, Inc. v. Arkansas ABC Div.*, 29 Ark. App. 229, 780 S.W.2d 347 (1989).

On appeal from circuit court's affirmation of board's denial of permit, appellate court will review the decision of the board, not the decision of the circuit court. *Green House, Inc. v. Arkansas ABC Div.*, 29 Ark. App. 229, 780 S.W.2d 347 (1989).

Where the board has merely recited the testimony rather than translating that testimony into findings of fact, an appellate court will be unable to determine the board's view of the facts, or the theory of law on which the denial of permit was based, and will remand the case. *Green House, Inc. v. Arkansas ABC Div.*, 29 Ark. App. 229, 780 S.W.2d 347 (1989).

On appeal, the decision of the trial court was reversed and the Board's decision affirmed, where the trial court overturned the Board's decision on grounds not raised in the hearing below, and thereby improperly substituted its decision for that of the agency. *Moore v. King*, 328 Ark. 639, 945 S.W.2d 358 (1997).

Burden of Proof.

The burden is on the applicant for a permit under this section, to show that he is qualified to hold the permit and that the issuance of the permit is in the public interest, whereupon the board may issue the permit. *Arkansas ABC Bd. v. King*, 275 Ark. 308, 629 S.W.2d 288 (1982).

Denial of Permit.

The board's finding that proposed private club would be a detrimental influence on large numbers of children in the area was neither arbitrary nor capricious and

was supported by substantial evidence. *Arkansas ABC Bd. v. King*, 275 Ark. 308, 629 S.W.2d 288 (1982).

Factors Considered.

Factors to be considered by the alcoholic beverage control board before issuing a permit to operate a private club include: (1) the number and types of alcoholic permits in the area; (2) economic impact; (3) traffic hazards; (4) remoteness of the area; (5) degree of law enforcement available; (6) input from law enforcement or other public officials in the area; and (7) comments from area residents in opposition or support of the permit. *Moore v. King*, 56 Ark. App. 21, 937 S.W.2d 677 (1997).

Grant of Permit.

The board did not err in granting a private club permit. *Department of Fin. & Admin. v. Samuhel*, 51 Ark. App. 76, 909 S.W.2d 656 (1995).

Permit improperly granted to an applicant lodge where one of its members knowingly provided false information at the hearing and where another of its members had been convicted of illegally selling alcoholic beverages on lodge premises. *Moore v. King*, 56 Ark. App. 21, 937 S.W.2d 677 (1997).

Mandamus.

Mandamus was not the proper remedy where a petitioner was seeking an order for the Alcoholic Beverage Control Board to rescind and void all permits issued to private clubs pursuant to this subchapter because the constitutionality of this subchapter could be determined in a proceeding for declaratory judgment and because the petitioner was attempting to enforce an alleged duty which was not a plain ministerial duty for which a writ of mandamus could issue. *Kemp-Bradford VFW Post 4764 v. Wood*, 262 Ark. 168, 554 S.W.2d 344 (1977).

Transfers.

The prohibition of § 3-4-206 would not apply to the transfer of a private club permit for dispensation of alcoholic beverages by the drink or in broken or unsealed containers for consumption on the premises. *Jones v. Reed*, 267 Ark. 237, 590 S.W.2d 6 (1979).

Cited: Jones v. Reed, 267 Ark. 237, 590 S.W.2d 6 (1979); Morris v. Torch Club, 278 Ark. 285, 645 S.W.2d 938 (1983); Department of Fin. & Admin. v. Samuhel, 51 Ark.

App. 76, 909 S.W.2d 656 (1995); Phillips v. Alcoholic Bev. Control Div., — Ark. App. —, — S.W.3d —, 2005 Ark. App. LEXIS 663 (Sept. 28, 2005).

3-9-223. Private clubs — Permit renewal fees — Taxes.

(a)(1) A permit shall be renewed on or before June 30 of each calendar year for the fiscal year beginning July 1.

(2) Any permit issued between January and July 1 of any year shall be at one-half ($\frac{1}{2}$) of the amount of the fee provided in § 3-9-222.

(b)(1) In addition, there is levied a supplemental tax of ten percent (10%) upon the gross proceeds or gross receipts derived by the private club from the charges to members for the preparation and serving of mixed drinks or for the cooling and serving of beer and wine, drawn from the private stocks of the members as provided in § 3-9-221, for consumption only on the premises where served.

(2) In addition to the tax levied under subdivision (b)(1) of this section, a supplemental tax of four percent (4%) is levied on the gross proceeds or gross receipts derived by the private club from the charges to members for the preparation and serving of mixed drinks drawn from the private stocks of the members as provided in § 3-9-221 for consumption only on the premises where served.

(c)(1) The supplemental tax shall be reported and paid to the Director of the Department of Finance and Administration in the same manner and at the same time as the gross receipts tax under the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., and shall be in addition to the tax.

(2)(A) The tax levied under subdivision (b)(2) of this section shall be credited as special revenues to the University of Arkansas Medical Center Fund.

(B)(i) The funds credited under subdivision (c)(2)(A) of this section shall be used exclusively for making loan repayments for construction projects authorized by Acts 1989 (1st Ex. Sess.), No. 261, until the loan is paid in full.

(ii) After the Chancellor of the University of Arkansas for Medical Sciences certifies in writing to the Chief Fiscal Officer of the State that the loan has been repaid in full, then revenue from the tax collected under subdivision (b)(2) of this section may be used for any purpose authorized by law.

(d) The director shall promulgate reasonable rules and regulations for the enforcement and collection of the tax levied herein, including a requirement that each permittee maintain records showing all such charges made.

(e) The taxes herein prescribed may be passed on to the members.

(f)(1) In addition to the fee or supplemental tax as levied herein, any city or incorporated town or any county in which the permitted premises are located, if located outside the limits of a city or incorporated town, may levy an additional permit fee or supplemental tax or

both additional permit fee and supplemental tax not to exceed one-half ($\frac{1}{2}$) of the amount of the fee or rate provided in this section.

(2) All fees and taxes levied hereunder by any city or county shall be used for city or county general purposes or for city or county economic development purposes.

(g) Holders of a bed and breakfast private club permit are exempt from the supplemental taxes in subsections (b) and (f) of this section.

(h)(1) The Department of Finance and Administration shall notify the city or county of an audit for the supplemental tax on the sale of alcoholic beverages consumed on the premises if:

(A) The department audits a private club;

(B) The department makes an assessment related to the audit against the private club; and

(C) The private club operates in a city or county that imposes a supplemental tax on the sale of alcoholic beverages consumed on the premises under § 3-9-223(f).

(2) The city or county may use this information to administer its supplemental tax on the sale of alcoholic beverages consumed on the premises.

(3) A city or county provided information under this subsection is subject to all of the confidentiality requirements of § 26-18-303.

History. Acts 1969, No. 132, § 10; 1975 (Extended Sess., 1976), No. 1016, § 1; 1983, No. 420, § 1; 1983, No. 844, §§ 2, 5; A.S.A. 1947, §§ 48-313.1, 48-1410, 48-1410n; reen. Acts 1987, No. 949, § 1; 1995, No. 372, § 1; 1995, No. 405, § 1; 1997, No. 546, § 1; 1999, No. 1063, § 4; 2003, No. 335, § 2; 2005, No. 1274, § 2.

A.C.R.C. Notes. Part of this section was reenacted by Acts 1987, No. 949, § 1. Acts 1987, No. 834, provided that 1987 legislation reenacting acts passed in the 1976 Extended Session should not repeal any other 1987 legislation and that such other legislation would be controlling in the event of conflict.

Acts 1989 (1st Ex. Sess.), No. 261, § 3, as amended by Acts 2005, No. 1274, § 3, effective Jan. 1, 2006, that repeals subsection (A) provided that: "(A) In order to assist the University of Arkansas for Medical Sciences in making loan repayments, there is hereby levied an additional tax of four percent (4%) which shall be in addition to and shall be collected in the same manner as the supplemental tax imposed by Arkansas Code 3-9-213 on the gross proceeds or gross receipts from the sale of alcoholic beverages sold for on premises consumption and there is levied an additional tax of four percent (4%)

which shall be in addition to and shall be collected in the same manner as the supplemental tax imposed by Arkansas Code 3-9-223 on the gross proceeds or gross receipts derived by a private club from the charges to members for the preparation and serving of mixed drinks only. Beer and wine sales are specifically exempt from the additional tax levied herein including those sales in 'wet' or 'dry' counties or parts thereof and those beer and wine sales in public or private establishments. The tax receipts shall be deposited as special revenues into the State Treasury and credited to the University of Arkansas Medical Center Fund to be used exclusively for making loan repayments for construction projects authorized by this Act. The tax levied herein shall be in effect only from the effective date of this Act through the final loan repayment made by the University of Arkansas for Medical Sciences. This Act gives no additional taxing authority to any municipality. The Chancellor of the University of Arkansas for Medical Sciences shall certify in writing to the Chief Fiscal Officer of the State when the final loan repayment has been made, who shall then notify the Commissioner of Revenues that the tax levied herein has expired.

Any monies received after such date shall be deposited in the State Treasury to be credited to the State Central Services Fund.

“(B) Beginning two (2) years after any of the Research Facility is in use, twenty-five percent (25%) of the annual increase above such year in federal grant indirect cost reimbursements shall be computed and used exclusively for making loan repayments.”

Acts 1995, No. 1065, § 3, provided: “Revenues derived from the additional taxes levied on alcoholic beverages in Section 3 of Act 261 of the First Extraordinary Session of 1989 and credited to the University of Arkansas Medical Center Fund to be used to repay loans made for the construction of specified projects authorized in Act 261 shall continue to be used for the repayment of those loans, except that revenues derived from such taxes during the period from July 1, 1995 through June 30, 1997 shall be used exclusively to fund appropriations made by

the Eightieth General Assembly to the University of Arkansas for Medical Sciences for the support of the Area Health Education Centers.”

Acts 2005, No. 1274, § 3, provided: “Effective January 1, 2006, uncodified § 3(A) of Act 261 of the First Extraordinary Session of 1989 is repealed.”

Publisher’s Notes. The Arkansas Gross Receipts Act of 1941 referred to in this section is codified as §§ 26-52-101 — 26-52-107, 26-52-201 — 26-52-208, 26-52-301, 26-52-303, 26-52-306, 26-52-307, 26-52-401, 26-52-402, 26-52-501 — 26-52-503, 26-52-508, 26-52-510.

Amendments. The 2003 amendment added (h).

The 2005 amendment substituted “ten percent (10%)” for “twelve percent (12%)” in (b)(1); rewrote (b)(2); redesignated former (c) as present (c)(1); and added (c)(2).

Effective Dates. Acts 2005, No. 1274, § 1: effective by its own terms Jan. 1, 2006.

CASE NOTES

ANALYSIS

Purpose.

County or Municipal Fee or Tax.

Mandamus.

Purpose.

There is nothing ambiguous or unclear in the provisions of this subchapter since the intent and purpose as to private clubs clearly is to levy a supplemental tax on the gross proceeds or gross receipts from alcoholic beverages dispensed but not sold by the private clubs to its members and guests in the same percentage amount as is levied on the gross proceeds or gross receipts from the sale of alcoholic beverages through hotels, cafes, and other lawful channels where such sales are lawfully conducted. *Faull v. Heath*, 259 Ark. 145, 532 S.W.2d 164 (1976).

County or Municipal Fee or Tax.

Cities and incorporated towns have the authority to levy a permit fee “and/or” supplemental tax in addition to the fee and tax levied by the state pursuant to subsection (f) of this section. *Cox v. City of Caddo Valley*, 305 Ark. 155, 806 S.W.2d 6 (1991).

Substitution of “or” for “and/or” following “permit fee” in subsection (f) of this section upon codification was not authorized by the laws or the Constitution of Arkansas in effect at the time of the omission, change or modification, and thus the “and/or” language of former A.S.A. § 48-1410 is still controlling. *Cox v. City of Caddo Valley*, 305 Ark. 155, 806 S.W.2d 6 (1991).

Mandamus.

Mandamus was not the proper remedy where a petitioner was seeking an order for the Alcoholic Beverage Control Board to rescind and void all permits issued to private clubs pursuant to this subchapter because the constitutionality of this subchapter could be determined in a proceeding for declaratory judgment and because the petitioner was attempting to enforce an alleged duty which was not a plain ministerial duty for which a writ of mandamus could issue. *Kemp-Bradford VFW Post 4764 v. Wood*, 262 Ark. 168, 554 S.W.2d 344 (1977).

Cited: *Jones v. Reed*, 267 Ark. 237, 590 S.W.2d 6 (1979); *Morris v. Torch Club*, 278 Ark. 285, 645 S.W.2d 938 (1983).

3-9-224. Private clubs — Sales prohibited.

(a) No private club permitted hereunder shall sell alcoholic beverages either by the package or drink.

(b) Alcoholic beverages, beer, and wine owned by members may be stored on the premises of the club.

(c) If any permittee shall sell, barter, loan, or give away any intoxicating liquor in violation of this subchapter or other alcoholic beverage control laws of this state, the permit of the club shall be revoked.

History. Acts 1969, No. 132, § 10;
A.S.A. 1947, § 48-1410.

CASE NOTES**Mandamus.**

Mandamus was not the proper remedy where a petitioner was seeking an order for the Alcoholic Beverage Control Board to rescind and void all permits issued to private clubs pursuant to this subchapter because the constitutionality of this subchapter could be determined in a proceeding for declaratory judgment and because

the petitioner was attempting to enforce an alleged duty which was not a plain ministerial duty for which a writ of mandamus could issue. *Kemp-Bradford VFW Post 4764 v. Wood*, 262 Ark. 168, 554 S.W.2d 344 (1977).

Cited: *Jones v. Reed*, 267 Ark. 237, 590 S.W.2d 6 (1979); *Morris v. Torch Club*, 278 Ark. 285, 645 S.W.2d 938 (1983).

3-9-225. Private clubs — Rules and regulations.

The Alcoholic Beverage Control Board is authorized and directed to establish rules and regulations with respect to permits issued under the provisions of § 3-9-222 to assure compliance with the provisions hereof and to prohibit any permittee from engaging in the unlawful sale of alcoholic beverages.

History. Acts 1969, No. 132, § 10;
A.S.A. 1947, § 48-1410.

CASE NOTES**ANALYSIS**

Local Regulations.
Mandamus.

Local Regulations.

A city ordinance which prohibited private clubs from serving or allowing consumption of mixed drinks between certain hours was not contrary to § 3-2-205(b)(4), since the ordinance was not concerned with retail sales but with consumption on the premises of private clubs; nor was the penalty provision of the ordinance in conflict with §§ 3-3-206 — 3-3-210, since consumption at a private club is not a "sale."

Tompos v. City of Fayetteville, 280 Ark. 435, 658 S.W.2d 404 (1983).

Mandamus.

Mandamus was not the proper remedy where a petitioner was seeking an order for the Alcoholic Beverage Control Board to rescind and void all permits issued to private clubs pursuant to this subchapter because the constitutionality of this subchapter could be determined in a proceeding for declaratory judgment and because the petitioner was attempting to enforce an alleged duty which was not a plain ministerial duty for which a writ of mandamus could issue. *Kemp-Bradford VFW*

Post 4764 v. Wood, 262 Ark. 168, 554 S.W.2d 6 (1979); Morris v. Torch Club, 278 S.W.2d 344 (1977). Ark. 285, 645 S.W.2d 938 (1983).

Cited: Jones v. Reed, 267 Ark. 237, 590

3-9-226. Private clubs — Advertising.

(a) It shall be unlawful for any private club, as defined by § 3-9-202(10), to use the advertising media to promote the consumption and use of alcoholic beverages or to advertise or announce the price of service of alcoholic beverages for on-premises consumption.

(b) Private clubs shall be entitled to use the advertising media to advertise or announce social functions of general interest such as four-ball tournaments, charity balls, entertainment, or other similar activities occurring within the confines of club property, when such advertising or announcement is preceded by the words "Notice to Members" and the name of the club or organization sponsoring such social activity.

History. Acts 1975, No. 901, § 1; A.S.A. 1947, § 48-955.

CASE NOTES

Cited: Singleton v. Smith, 289 Ark. 577, 715 S.W.2d 437 (1986).

3-9-227. Large attendance facility mixed drink permit.

(a)(1) There is hereby created a large attendance facility mixed drink permit which is to be issued for any large attendance facility, as defined by § 3-9-202(8)(B), in which pari-mutuel wagering has been authorized by law.

(2) Such permits may only be issued in cities of the first class in which the sale of alcoholic beverages is authorized by law.

(b) The permit fees and attendance qualifications for such permits are the same as those currently provided for large attendance facilities as set out in § 3-9-202(8)(B).

History. Acts 1993, No. 1247, §§ 1, 2.

A.C.R.C. Notes. References to "this subchapter" elsewhere in § 3-9-201 et

seq. may not apply to this section which was enacted subsequently.

3-9-228. Private clubs — Reapplication for permit.

(a) Any person who has applied to the Director of the Alcoholic Beverage Control Division for a permit to operate as a private club in an area which has not elected to allow the sale of alcoholic beverages, and that application was denied, may reapply by following the procedures set forth in § 3-9-222 and the additional procedures provided for in subsection (b) of this section.

(b)(1) If the applicant is reapplying within two (2) years from the date an application was denied by the director, the application shall be

accompanied by certification from the county clerk of the county where the private club is to be located certifying that the applicant obtained signatures from not less than twenty-five percent (25%) of the registered voters in the county.

(2) The application shall be filed no later than twenty (20) days from the date that the county clerk certifies the petitions.

(3) The signatures must be obtained on petitions which clearly state that the purpose of the petitions is to obtain an alcoholic beverage permit for a private club and to serve alcoholic beverages.

(4) The person obtaining signatures shall verify the signatures by affidavit which is to be filed with the county clerk at the time of filing the petitions for certification.

History. Acts 1995, No. 1212, §§ 1, 2; 2005, No. 1245, § 1. seq. may not apply to this section which was enacted subsequently.

A.C.R.C. Notes. References to "this subchapter" elsewhere in § 3-9-201 et **Amendments.** The 2005 amendment substituted "two (2)" for "five (5)" in (b)(1).

3-9-229. Collection of taxes.

The Director of the Department of Finance and Administration may assess and collect delinquent state and local taxes from the owner or owners of the hotel or restaurant, file claims for unpaid taxes against bonds or other security required to be posted by the permittee, and enforce liens against assets held by the owner or owners. The Alcoholic Beverage Control Division may suspend or refuse to renew a permit held by a nonpartner if the hotel or restaurant owner fails to remit state taxes.

History. Acts 1997, No. 222, § 2.

3-9-230, 3-9-231. [Reserved.]

3-9-232. Inspection of premises and records of licensed premises and private clubs.

(a) No permit shall be issued under this subchapter unless the permittee has consented in writing that the licensed premises and its books and records shall be open at all times to all law enforcement and tax officials and officials of the Alcoholic Beverage Control Division, the Alcoholic Beverage Control Enforcement Division, and the Director of the Department of Finance and Administration without requirement of warrant or other legal process.

(b) No organization holding a permit under this subchapter shall market, sell, or otherwise furnish the names of its members or any other information pertaining to its members to any other public or private entity, except as provided in subsection (a) of this section.

History. Acts 1969, No. 132, § 6; A.S.A. 1947, § 48-1406; Acts 2003, No. 654, § 1.

3-9-233. Closing hours.

(a) The regulations of the Alcoholic Beverage Control Board and existing laws with respect to the closing hours of licensed premises under this subchapter shall be applicable to all such licensed premises in the state, except that:

(1) The governing body of a city in which hotel and restaurant licensed premises are located may fix by ordinance later closing hours for such hotel and restaurant licensed premises than are prescribed by state law or regulations of the board for licensed premises generally. In that case, the closing hours for such hotel and restaurant licensed premises as provided by ordinance of the governing body of the city shall govern with respect to the licensed premises in the city; and

(2) In any county of this state having a population of not less than fifty-three thousand (53,000) and not more than fifty-eight thousand (58,000) in which hotel and restaurant licensed premises are located outside the corporate limits of any municipality, the county court of the county may fix by order of the court later closing hours for the hotel and restaurant licensed premises than are prescribed by state law or regulations of the board for licensed premises generally. In that case, the closing hours for the hotel and restaurant licensed premises located in the county outside of municipal limits shall be governed by the order of the county court.

(b) However, under no circumstances may any licensed premises remain open more than two (2) hours after 12:00 midnight on Saturday night.

History. Acts 1969, No. 132, § 12; 1973, No. 387, § 1; 1975, No. 137, § 1; A.S.A. 1947, § 48-1412.

CASE NOTES**City Ordinances.**

A city had the authority to enact an ordinance regulating the sale or consumption of mixed drinks at private clubs during certain hours of the day, since the state had not preempted the subject by statute or regulation. *Tompos v. City of Fayetteville*, 280 Ark. 435, 658 S.W.2d 404 (1983).

The fact that the Alcoholic Beverage Control Board had never exercised its regulatory authority under this section by adopting specific operating hours for pri-

vate clubs did not mean that private clubs had the right to remain open and serve or permit consumption of alcohol 24 hours a day; accordingly, a city ordinance prohibiting private clubs from serving or allowing consumption of mixed drinks between certain hours was enacted for the protection of public health, welfare, safety, and morals, and was not in conflict with the general law of the state. *Tompos v. City of Fayetteville*, 280 Ark. 435, 658 S.W.2d 404 (1983).

3-9-234. Failure to pay renewal fees or taxes.

(a) If any permittee shall fail to remit any fee levied in this subchapter for the annual renewal of a permit within the time provided in § 3-9-223, the permit shall be revoked.

(b) If any permittee shall fail to remit the supplemental tax upon gross receipts within the time provided in § 3-9-223, a penalty of twenty-five percent (25%) shall be due and payable. If such taxes plus penalty are not paid within thirty (30) days from the due date, the Director of the Alcoholic Beverage Control Division shall revoke the permit of the permittee, and the Director of the Department of Finance and Administration shall seek recovery of the amount of such taxes and penalties due from the permittee.

History. Acts 1969, No. 132, § 11; A.S.A. 1947, § 48-1411; Acts 1999, No. 910, § 2.

Publisher's Notes. Acts 1999, No. 910, § 4, provided: "This Act shall be effective on or after July 1, 1999."

3-9-235. Suspension, cancellation, and revocation of permits.

(a) Upon his or her own complaint or that of any law enforcement agency having jurisdiction over the permitted premises, the Director of the Alcoholic Beverage Control Division may suspend, cancel, or revoke any permit granted hereunder for violation by the permittee of any provision of this subchapter or any rule, regulation, or order of the Alcoholic Beverage Control Board.

(b) Permits may be suspended, cancelled, or revoked for the following causes:

(1) Conviction of the permittee for violating any of the provisions of this subchapter;

(2) Willful failure or refusal by any permittee to comply with any of the provisions of this subchapter or of any rule or regulation adopted pursuant thereto;

(3) The making of any materially false statement in any application for a permit;

(4) The possession for sale on the permitted premises of any alcoholic beverages upon which applicable taxes have not been paid;

(5) The willful failure of any permittee to keep any records or make any reports required by this subchapter or by any rule or regulation adopted thereunder or to allow an inspection of such records by any duly authorized person; and

(6) The suspension or revocation of a permit issued to the permittee by the federal government or conviction of violating any federal law relating to alcoholic beverages.

(c) No permit shall be suspended, cancelled, or revoked except after a hearing by the director with reasonable notice to the permittee and an opportunity for him or her to appear and defend as provided in § 3-2-212.

(d)(1) Appeals to the board from an order by the director of suspension, cancellation, or revocation may be had as provided by § 3-2-213.

(2) Appeals from a decision of the board may be had as provided in § 3-2-216.

History. Acts 1969, No. 132, § 13; A.S.A. 1947, § 48-1413; Acts 1999, No. 910, § 3.

Publisher's Notes. Acts 1999, No. 910, § 4, provided: "This Act shall be effective on or after July 1, 1999."

Cross References. Licenses and permits, removal of disqualification for criminal offenses, § 17-1-103.

Revocation and suspension procedure generally, §§ 3-2-212 — 3-2-217.

CASE NOTES

ANALYSIS

Appeals.

Scope of Authority.

Appeals.

This section applies only to appeals from an order of the director suspending, cancelling, or revoking a permit issued under this subchapter. It has nothing to do with appeals from orders of the board granting a transfer of the location of an outstanding permit. *Jones v. Reed*, 267 Ark. 237, 590 S.W.2d 6 (1979).

Scope of Authority.

Although this section gives the director the power to suspend, cancel, or revoke a permit granted under the act for violation of this subchapter or any rule, regulation, or order of the board, it does not authorize any law enforcement agency having jurisdiction over the permitted premises to do so. *Jones v. Reed*, 267 Ark. 237, 590 S.W.2d 6 (1979).

3-9-236. Permittees — Miscellaneous unlawful practices.

It shall be unlawful and constitute a Class A misdemeanor for any person holding a permit hereunder or his or her agents, servants, or employees knowingly to do any of the following acts:

(1) Serve any alcoholic beverage to a person who is under twenty-one (21) years of age;

(2) Serve any alcoholic beverage to an intoxicated person, to any person who is known to be insane or mentally defective, to any person who is known to habitually drink alcoholic beverages to excess, or to any person who is known to be an habitual user of narcotics or other habit-forming drugs;

(3) Sell alcoholic beverages at any prohibited time;

(4) Place any sign of any description on the exterior of the permitted premises indicating that alcoholic beverages are sold for consumption therein;

(5) Misrepresent the brand of any alcoholic beverage sold or offered for sale;

(6) Keep any alcoholic beverage otherwise than in the bottle or container in which it was purchased;

(7) Refill or partly refill any bottle or container of alcoholic beverage;

(8) Dilute or otherwise tamper with the contents of any bottle or container of alcoholic beverage;

(9) Fail to break and destroy by the close of each business day all empty bottles or containers;

(10) Remove or obliterate any label, mark, or stamp affixed to any bottle or container of alcoholic beverage offered for sale;

(11) Deliver or sell the contents of any bottles or containers, the label, mark, or stamp upon which has been removed or obliterated;

(12)(A) Employ any person less than twenty-one (21) years of age in the mixing or serving of alcoholic beverages.

(B) Provided, that any permittee that has obtained a permit under the provisions of § 3-9-202(8) or § 3-9-202(9) may employ persons nineteen (19) years of age or older in the serving of alcoholic beverages.

(C) Nothing herein shall prohibit a minor eighteen (18) years of age or older to be employed as a musician or to be employed in the preparation or serving of food or in the housekeeping department of any establishment authorized to dispense mixed drinks under this subchapter;

(13) Allow any immoral, lewd, obscene, indecent, or profane conduct, language, literature, pictures, or materials on the permitted premises;

(14) Consume or allow the consumption by any employee of intoxicating beverages while on duty;

(15)(A) Keep on the permitted premises a slot machine or any gambling or gaming device, machine, or apparatus, except as provided in subdivision (15)(B) of this section.

(B) An event held by a nonprofit organization that is exempt from taxation under § 26 U.S.C. 501(c)(3) shall be exempt from subdivision (15)(A) of this section if:

(i) The nonprofit organization registers the event with the Alcoholic Beverage Control Division at least sixty (60) days before the event;

(ii) All proceeds of the event are for the benefit of the nonprofit organization;

(iii) The games in the event do not use money but may use some form of play money;

(iv) No cash or any other item of value is won or awarded as a prize; and

(v) The event is for amusement and not for gambling purposes in violation of Arkansas law or Arkansas Constitution, Article 19, § 14.

(C)(i) This section shall apply to only one (1) event held by a nonprofit organization during a calendar year.

(ii) No licensed premises shall be allowed more than ten (10) events under this subdivision per calendar year.

(D)(i) A violation of this section is a misdemeanor and is punishable by a fine of one thousand dollars (\$1,000).

(ii) If a nonprofit organization commits a second violation of this subdivision, the nonprofit organization shall be ineligible to sponsor an event under this section.

(E) The division may promulgate appropriate rules to carry out the intent of this subdivision (15);

(16) Sell any alcoholic beverage unless the beverage is owned outright by the permittee;

(17) Employ any person in the serving of alcoholic beverages who has been convicted of any violation of the laws against possession, sale, manufacture, or transportation of intoxicating liquor or any crime involving moral turpitude;

(18) Violate any rule, regulation, or order of the Alcoholic Beverage Control Board;

(19) Fail to report all taxes applicable to the sale of alcoholic beverages for on-premises consumption; or

(20) Possess on the permitted premises or sell or dispense any alcoholic beverages upon which the federal or state taxes have not been paid.

History. Acts 1969, No. 132, § 14; 1971, No. 467, § 1; A.S.A. 1947, § 48-1414; Acts 2003, No. 1807, § 2; 2005, No. 1170, § 1; 2005, No. 1994, § 195.

Amendments. The 2003 amendment redesignated former (12) as present (12)(A) and (12)(C), and inserted (12)(B).

The 2005 amendment by No. 1170 re-

designated former (15) as present (15)(A); inserted "except as provided in subdivision (15)(B) of this section" in present (15)(A); and added (15)(B)-(E).

The 2005 amendment by No. 1994 inserted "Class A" in the introductory language.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2003 Arkansas General Assembly, Alcoholic Beverages, 26 U. Ark. Little Rock L. Rev. 349.

Survey of Legislation, 2005 Arkansas General Assembly, Alcoholic Beverages, 28 U. Ark. Little Rock L. Rev. 319.

3-9-237. Disposition of funds.

All permit fees and supplemental gross receipts taxes collected for the state pursuant to this subchapter shall be remitted monthly to the Treasurer of State as general revenues and be credited to the State Apportionment Fund. There the fees and taxes shall be allocated and transferred to the various funds, fund accounts, and accounts participating in general revenues in the respective proportions to each as provided by, and shall be used for the respective purposes set forth in, the Revenue Stabilization Law, § 19-5-101 et seq.

History. Acts 1935, No. 108, Art. 4, § 5; § 36 as added by 1971, No. 585, § 12; 1953, No. 118, § 36(E); 1969, No. 132, A.S.A. 1947, § 48-1418. § 18, as amended by Acts 1953, No. 118,

3-9-238. Pari-mutuel mixed drink permit.

(a)(1) There is hereby created a pari-mutuel mixed drink permit which is to be issued for any restaurant, as defined by § 3-9-202(8)(A), in any county where pari-mutuel wagering has been authorized by law.

(2) The permits may be issued only in cities of the first class in which the sale of alcoholic beverages is authorized by law.

(b) The permit fees and qualifications for the permits are the same as those currently provided for restaurants as set out in § 3-9-202(8)(A). However, the seating capacity of these restaurants must be at least one hundred (100) seats.

History. Acts 1995, No. 1288, § 1; 2001, No. 804, § 1.

Publisher's Notes. Acts 1995, No.

1288 became law without the Governor's signature.

SUBCHAPTER 3 — WINE

SECTION.

3-9-301. Definitions.

3-9-302. Penalties.

3-9-303. Sale by licensed cafe or restaurant authorized — Restrictions.

3-9-304. Sale by restaurant located near certain cities.

SECTION.

3-9-305. License applications — Qualifications.

3-9-306. Prohibited acts.

3-9-307. Revocation or suspension of license.

Effective Dates. Acts 1971, No. 585, § 34: approved Apr. 6, 1971. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that in order to establish an orderly procedure which will insure the monthly and quarterly distribution of funds for the necessary services and operations of the state government, as provided for in this act, it is necessary that the provisions of this act become effective immediately; that under the provisions of this act seriously needed improvements for many of our public institutions are contemplated, and only the provisions of this act will provide such funds which will be adequate to alleviate this situation; and that only the provisions of this act will correct many of our financial difficulties, and which otherwise may deprive the citizens of this state from receiving the benefits which the operation of state government contemplates. Therefore, an emergency is hereby declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall take effect and be in full force from and after its passage."

Acts 1979, No. 141, § 3: Mar. 23, 1979. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present law relating to selling and serving wine with meals in restaurants is unduly restrictive; that it is unfair and discriminatory to deny persons in smaller cities and other areas an opportunity to have wine service with their meals in restaurants; that this act is designed to alleviate this situation and should be given effect immediately. There-

fore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1979, No. 545, § 3: Feb. 16, 1979. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present law relating to selling and serving wine with meals in restaurants is unduly restrictive in that it permits the same only in restaurants located in cities having a population of 15,000 or more; that it is unfair and discriminatory to deny persons in smaller cities located in said counties an opportunity to have wine service with their meals in restaurants while permitting the same in larger cities; that this act is designed to alleviate this situation and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 606, § 14: July 1, 1991. Emergency clause provided: "It is hereby found and determined that numerous persons who are resident aliens of the United States desire to operate establishments that dispense alcoholic beverages in the State of Arkansas and that the same are presently prohibited from obtaining a license in their name. It is further found and determined that the requirement of United States citizenship in order to maintain these establishments poses a burden upon commerce and restricts the

number of persons who are able to contribute to the overall economy of the State of Arkansas. It is further found and determined that numerous national corporations are hindered in their operations in that they cannot have newly transferred managers or other key employees assume positions of responsibility within their local outlets since those persons do not meet the two (2) year residency requirement and that such requirement poses an unreasonable burden on the conduct of business in this state as it relates to alcohol beverage outlets. It is further found that the present process of applying for or renewing ABC licenses by requiring proof of payment of personal property taxes is cumbersome, unnecessary, and has no di-

rect relationship to the operation of the ABC permitted outlet. It is further found and determined that there are presently numerous conflicting requirements which are applied to applicants for various retail licenses issued by the state ABC Division and that it is necessary and proper that such permit requirements be made uniform. That all of the aforementioned encumbrances are a burden on the transaction of commerce in the state and upon the efficient administration of government in the state. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect on and after July 1, 1991."

3-9-301. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Director" means the Director of the Alcoholic Beverage Control Division;

(2) "Wine" or "wines" means any port wine, sherry wine, vermouth wine, or other wines, the alcoholic content of which does not exceed twenty-one percent (21%), regardless of whether the wines are manufactured within or without the State of Arkansas;

(3) "License" means a license to sell wine in a restaurant or cafe as defined herein. An annual fee of fifty dollars (\$50.00) shall be paid for each license or renewal thereof. All moneys derived from such fees shall be deposited in the State Treasury as general revenues to the credit of the State Apportionment Fund, there to be allocated and transferred to the various funds, fund accounts, and accounts participating in general revenues in the respective proportions to each as provided by law, and to be used for the respective purposes set forth in the Revenue Stabilization Law, § 19-5-101 et seq.;

(4)(A) "Restaurant" or "cafe" means a place of business serving food to the public prepared for consumption on the premises at an established eating place, as defined by reasonable rules and regulations promulgated by the Alcoholic Beverage Control Board.

(B)(i) The board is authorized and directed to establish appropriate rules and regulations defining "established eating places" to the extent that licenses granted under the provisions of this subchapter shall be issued only to those business establishments whose principal business is serving food for consumption on the premises.

(ii) However, a drive-in shall not be classified as an established eating place; and

(5) "Person" means any person, firm, partnership, association, or corporation.

History. Acts 1965, No. 120, § 1; 1971, No. 441, § 2; 1971, No. 585, § 12; A.S.A. 1947, § 48-626; Acts 2005, No. 1247, § 1.

Amendments. The 2005 amendment substituted "twenty-one percent (21%)" for "fourteen percent (14%)" in (2).

CASE NOTES

Cited: *Tiffany's Restaurants, Inc. v. City of Little Rock*, 280 Ark. 402, 658 S.W.2d 394 (1983).

3-9-302. Penalties.

If any cafe or restaurant licensed to sell wine as authorized in this subchapter shall violate any of the provisions of this subchapter or any of the provisions of other laws of this state regarding the sale of wine at retail, the owner or operator of the cafe or restaurant shall be guilty of a Class B misdemeanor.

History. Acts 1965, No. 120, § 6; 1971, No. 441, § 4; A.S.A. 1947, § 48-631; Acts 2005, No. 1994, § 376.

Amendments. The 2005 amendment inserted "Class B" and deleted the former second sentence, which stated: "Upon conviction, the owner or operator shall be

fined in the sum of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) or imprisoned in the county jail not less than ten (10) days nor more than thirty (30) days, or be both so fined and imprisoned."

3-9-303. Sale by licensed cafe or restaurant authorized — Restrictions.

(a) It shall be lawful for any cafe or restaurant, as defined in § 3-9-301, in this state to sell wines, as defined in § 3-9-301, for consumption with food served in such cafe or restaurant upon obtaining a license, and paying the fee therefor, from the Director of the Alcoholic Beverage Control Division as provided in this subchapter.

(b) However, it shall be unlawful for the director to issue any license to a cafe or restaurant for sales of wine served with food in any city, county, township, or other area in this state wherein the sale and possession of wines is unlawful.

(c) All licenses shall be renewed annually in the manner provided by law.

(d) The holder of a license to sell wine in a restaurant or café, as defined in § 3-9-301, which is located in any city having a population of less than six hundred (600) persons and in a county having a population of less than seventeen thousand five hundred (17,500) persons according to the 1990 Federal Decennial Census and within three (3) miles of a river which serves as a common boundary between that county and another state shall be entitled, in addition to other privileges inherent under the permit, to sell wine in unopened containers from such restaurant for off-premises consumption.

History. Acts 1965, No. 120, § 2; 1971, No. 441, § 3; 1979, No. 141, § 1; 1979, No.

545, § 1; A.S.A. 1947, § 48-627; Acts 1989, No. 299, § 1; 1999, No. 1064, § 1.

3-9-304. Sale by restaurant located near certain cities.

Any restaurant, as defined in § 3-9-301(4), which is located within two (2) miles of a city having a population of at least fifty-five thousand (55,000) but not more than sixty thousand (60,000) persons according to the 1970 Federal Decennial Census, and in an area in which the sale of alcoholic beverages is lawful, shall be entitled to make application for and obtain a permit to serve wine with food in such restaurants in the manner prescribed in this subchapter.

History. Acts 1979, No. 687, § 1; A.S.A. 1947, § 48-627.1.

3-9-305. License applications — Qualifications.

(a) No license shall be issued to any person authorizing the sale of wine at retail for consumption on the premises with food served in any cafe or restaurant unless the person shall file with the Director of the Alcoholic Beverage Control Division a verified application therefor, accompanied by the fee required by law, and shall state in the application that he or she possesses the following qualifications:

(1) The applicant is a person of good moral character, a citizen or resident alien of the United States, and a resident of the county in which the permit will be operated, or resides within thirty-five (35) miles of the address of the premises described in the application;

(2) The applicant has not been convicted of a felony or has not been convicted within five (5) years of the date of his or her application of any violation of the laws of this state or any other state relating to alcoholic beverages;

(3) The applicant has not had revoked within five (5) years next preceding his or her application any license issued to him or her pursuant to the laws of this state or any other state to sell alcoholic liquor of any kind;

(4) The applicant shall be the owner of the premises for which the license is sought or the holder of an existing lease, buy-sell agreement, offer and acceptance, or option to lease thereon;

(5) If the applicant is a copartner, all members of the copartnership must be qualified to obtain a license;

(6)(A) If the applicant is a corporation, all officers and directors thereof, any stockholder owning more than five percent (5%) of the stock of such corporation, and the person or persons who shall conduct and manage the licensed premises for the corporation shall possess all the qualifications required herein for an individual license.

(B) The requirement as to residence in the United States or citizenship of the United States shall not apply to officers, directors, and stockholders of the corporation, but the requirement shall apply to any officer, director, or stockholder who is also the manager of the licensed premises in any capacity in the conduct or operation of the licensed premises; and

(7) The cafe or restaurant making application for the license is primarily engaged in the business of serving foods to the public prepared for consumption on the premises and must be an established eating place within the rules and regulations promulgated by the Alcoholic Beverage Control Board as provided in § 3-9-301(4).

(b) Any misstatement or concealment of fact in the application shall be grounds for the revocation of any license issued pursuant to the application.

History. Acts 1965, No. 120, § 3; A.S.A. 1947, § 48-628; Acts 1989, No. 295, § 2; 1991, No. 606, § 8; 1995, No. 536, § 3; 1999, No. 948, § 2.

Publisher's Notes. Subdivision (a)(2) of this section may be superseded by § 17-1-103 which provides for the removal of an automatic disqualification for criminal convictions in obtaining permits and licenses for professions, trades, or occupations.

Acts 1991, No. 606, § 11, provided: "It is the intent of this law to no longer require citizenship of the United States in order for a person to hold certain ABC licenses and to eliminate the requirement that persons be a resident of the State of Arkansas for two (2) years prior to the time that they make application for an ABC license. It is also the intent of this law that persons no longer be required to be registered voters in the county in which the

permit is located and it is further intended that a person must either reside in the county where the premises is located or live within twenty-five (25) miles of the address of the permitted outlet. It is also the intent of this legislation that proof of payment of personal property taxes to the individual counties will no longer be required in order for a person to apply for or renew an ABC license. It is the further intent of this law that various application requirements regarding convicted felon status, status as it relates to violation of liquor laws of this state or any other state and revocation of permits shall be made uniform among various permits issued by the ABC Division. Therefore, any laws that may conflict with this act shall be and the same hereby are repealed."

Cross References. Licenses and permits, removal of disqualification for criminal offenses, § 17-1-103.

3-9-306. Prohibited acts.

No holder of a license authorizing the sale of wine for consumption with food served on the premises where sold, nor any servant, agent, or employee of the licensee, shall do any of the following upon the licensed premises:

- (1) Knowingly sell wine to a minor;
- (2) Knowingly sell wine to any person while the person is in an intoxicated condition;
- (3) Sell wine upon the licensed premises or permit wine to be consumed thereon on any day or at any time when the sale or consumption is prohibited by law; or
- (4) Permit on the licensed premises any disorderly conduct, breach of peace, or any lewd, immoral, or improper entertainment, conduct, or practices.

History. Acts 1965, No. 120, § 4; A.S.A. 1947, § 48-629.

Cross References. Sales on Christ-

mas Day, § 3-3-211.

Sale on Sunday or during polling hours, § 3-3-210.

3-9-307. Revocation or suspension of license.

Proceedings for the revocation or suspension of any license issued pursuant to the provisions of this subchapter shall be in the same manner as provided by law for revocation or suspension of licenses for sale of beer for consumption on the premises.

History. Acts 1965, No. 120, § 5; A.S.A. 1947, § 48-630.

pension of licenses generally, §§ 3-2-212 — 3-2-217.

Cross References. Revocation or sus-

SUBCHAPTER 4 — SUNDAY SALES

SECTION.

- 3-9-401. Purpose.
- 3-9-402. Definitions.
- 3-9-403. Penalties.
- 3-9-404. Permit — Requirements.
- 3-9-405. Permit — Application.
- 3-9-406. Consent to inspection.
- 3-9-407. Fees for permit.
- 3-9-408. Rules and regulations.

SECTION.

- 3-9-409. Suspension, etc., of permit — Appeals.
- 3-9-410. Grounds for suspension, etc., of permit.
- 3-9-411. Sale of beer and wine.
- 3-9-412. Disposition of fees.
- 3-9-413. Exemptions.

A.C.R.C. Notes. References to “this subchapter” in §§ 3-9-401 — 3-9-412 may not apply to § 3-9-413 which was enacted subsequently.

Effective Dates. Acts 1989, No. 837, § 5; Mar. 22, 1989. Emergency clause provided: “It is hereby found and determined by the General Assembly that the term ‘restaurant’ as used in the laws relating to the service of alcoholic beverages for on premises consumption is in urgent need of clarification to assure the effective administration of such laws; that this act is designed to provide such clarification and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1991, No. 606, § 14; July 1, 1991. Emergency clause provided: “It is hereby found and determined that numerous persons who are resident aliens of the United States desire to operate establishments that dispense alcoholic beverages in the State of Arkansas and that the same are presently prohibited from obtaining a license in their name. It is further found and determined that the requirement of United States citizenship in order to

maintain these establishments poses a burden upon commerce and restricts the number of persons who are able to contribute to the overall economy of the State of Arkansas. It is further found and determined that numerous national corporations are hindered in their operations in that they cannot have newly transferred managers or other key employees assume positions of responsibility within their local outlets since those persons do not meet the two (2) year residency requirement and that such requirement poses an unreasonable burden on the conduct of business in this state as it relates to alcohol beverage outlets. It is further found that the present process of applying for or renewing ABC licenses by requiring proof of payment of personal property taxes is cumbersome, unnecessary, and has no direct relationship to the operation of the ABC permitted outlet. It is further found and determined that there are presently numerous conflicting requirements which are applied to applicants for various retail licenses issued by the state ABC Division and that it is necessary and proper that such permit requirements be made uniform. That all of the aforementioned encumbrances are a burden on the transaction of commerce in the state and upon the

efficient administration of government in the state. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect on and after July 1, 1991."

Acts 1995, No. 563, § 10: emergency failed to pass. Emergency clause provided: "It is hereby found and determined by the General Assembly that although the sale of alcoholic beverages on Sunday is permitted in some cities of this State, even in those cities the sale of beer and wine is not permitted on Sunday; that it is fundamentally unfair to authorize the Sunday sale of mixed drinks but to prohibit the Sunday sale of beer and wine; that this act would provide equal protection to the purveyors of beer and wine; that to give immediate effect to this act will lessen the possibility of a challenge to the present law allowing the Sunday sale of mixed drinks, and thereby save the taxpayers the cost involved in defending the challenge and the cost of an unsuccessful defense; and that, therefore, this act should go into effect immediately. Therefore, an emergency is hereby declared to

exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 2007, No. 1017, § 4: Apr. 3, 2007. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that current laws concerning the sale of alcoholic beverages at certain large attendance facilities enact a financial hardship on those facilities; and that a revision to Arkansas law is necessary to ease those hardships and provide a more equitable system of selling alcoholic beverages on certain days and times. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

RESEARCH REFERENCES

Am. Jur. 45 Am. Jur. 2d, Int. Liq., §§ 260, 278, 279.

73 Am. Jur. 2d, Sun. & H., §§ 27, 43.

C.J.S. 17A C.J.S., Contr., § 289.

83 C.J.S., Sunday, § 17.

U. Ark. Little Rock L.J. Survey—Miscellaneous, 10 U. Ark. Little Rock L.J. 593.

3-9-401. Purpose.

The business of handling, distributing, and selling alcoholic beverages for on-premises consumption on Sunday is declared to be a privilege under the laws of the State of Arkansas and the purpose of this subchapter is to require such permits and to impose such fees as are necessary to regulate and to limit the business of Sunday sales of alcoholic beverages for on-premises consumption to those restaurants serving alcoholic beverages with meals and to those hotels and convention centers competing for convention and tourism business.

History. Acts 1987, No. 766, § 1.

3-9-402. Definitions.

As used in this subchapter, unless the context otherwise requires:

- (1) "Alcoholic beverages" means all intoxicating liquors of any sort;
- (2) "Board" means the Alcoholic Beverage Control Board of this state or any successor agency;
- (3) "Director" means the Director of the Alcoholic Beverage Control Division;
- (4) "Hotel" means every building or other structure commonly referred to as a hotel, motel, motor hotel, motor lodge, or similar name where sleeping accommodations are offered which is kept, used, maintained, advertised, and held out to the public to be a place where food is actually served and consumed for adequate pay to travellers or guests, whether transient, permanent, or residential, and which:
 - (A) Has fifty (50) or more rooms for sleeping accommodations;
 - (B) Is kept, used, maintained, advertised, and held out to the public to be a place where food and food items are served;
 - (C) Actually serves full and complete meals prepared in a fully equipped and sanitary kitchen and prepared from uncooked foods for service to and for consumption by the guests and customers on the premises;
 - (D) Has a dining room or rooms with a seating capacity of at least fifty (50) people where meals are served to guests and customers;
 - (E) Has the sleeping accommodations and the dining room or rooms in the same building or in separate buildings or structures used in connection therewith that are on the same premises and are a part of the same hotel operation;
 - (F) Has employed a sufficient number and kind of employees to prepare, cook, and serve suitable foods or food items to its guests and customers;
 - (G) Serves food on all days of operations;
 - (H) Maintains separate sales figures for alcoholic beverages; and
 - (I) Has gross sales of sixty percent (60%) or more from items in the following categories:
 - (i) Food and food items;
 - (ii) Nonalcoholic beverages; and
 - (iii) Including up to twenty percent (20%) of receipts for sleeping accommodations;
- (5) "On-premises consumption" means the sale of alcoholic beverages by the drink or in broken or unsealed containers for consumption on the premises where sold;
- (6) "Person" means any natural person, partnership, association, or corporation;
- (7) "Private club" means a nonprofit organization, association, or corporation as defined as a private club in § 3-9-202(10);
- (8) "Restaurant" means any public or private place, without sleeping accommodations and that place:
 - (A) Is kept, used, maintained, advertised, and held out to the public or to a private or restricted membership as a place whose

primary function and purpose is to take orders for and to serve food and food items;

(B) Actually serves full and complete meals prepared in a fully equipped and sanitary kitchen and prepared from uncooked foods for service to and for consumption by its guests or members on the premises;

(C) Has a seating capacity of at least fifty (50) people;

(D) Has employed a sufficient number and kind of employees to prepare, cook, and serve suitable foods to its guests or members;

(E) On Sundays, serves alcoholic beverages on-premises only, in conjunction with meals;

(F) Serves food on all days of operations;

(G) Maintains separate sales figures for alcoholic beverages; and

(H) Has gross sales of sixty percent (60%) or more from the sale of food, food items, and nonalcoholic beverages or in the case of excursion boats, has gross sales of sixty percent (60%) of their gross income from boat rental fees and sales of food and nonalcoholic beverages;

(9) "Excursion boat" means any passenger vessel or boat, such as a riverboat, floating restaurant, or excursion boat, which meets the requirements for a permit for on-premises consumption of alcoholic beverages under § 3-9-201 et seq. as a restaurant; and

(10) "Restaurant" means any place that qualifies as a restaurant under subdivision (8) of this section or any large meeting or attendance facility as defined in § 3-9-202(8) which meets the requirements for a permit for on-premises consumption of alcoholic beverages under § 3-9-201 et seq. as a large meeting or attendance facility restaurant.

History. Acts 1987, No. 766, § 2; 1989, No. 837, § 2; 1989, No. 868, § 1.

3-9-403. Penalties.

(a)(1) It shall be unlawful and shall constitute a Class A misdemeanor for any person not holding a valid Sunday sales permit issued under this subchapter to sell alcoholic beverages for on-premises consumption.

(2) Each violation shall constitute a separate offense.

(b) The Director of the Department of Finance and Administration shall have the authority to suspend, cancel, or revoke either the permit issued under this subchapter or the on-premises permit issued under § 3-9-201 et seq. to any hotel or restaurant, or both, if a permittee is convicted under this section.

History. Acts 1987, No. 766, § 11; inserted "Class A" in (a)(1); deleted former 2005, No. 1994, § 337. (a)(2); and redesignated former (a)(3) as

Amendments. The 2005 amendment present (a)(2).

3-9-404. Permit — Requirements.

(a) Notwithstanding any other laws of this state which permit the sale of alcoholic beverages for on-premises consumption on Sundays, no hotel or restaurant that is licensed to sell alcoholic beverages for on-premises consumption under § 3-5-301 et seq., § 3-9-201 et seq., or § 3-9-301 et seq. shall be permitted to sell alcoholic beverages for on-premises consumption on Sundays until they obtain a permit, approved and issued by the Director of the Alcoholic Beverage Control Division, in accordance with rules and regulations promulgated by the Alcoholic Beverage Control Board for the sale of alcoholic beverages for on-premises consumption on Sundays. However, this subchapter is not intended to impose an additional requirement on private clubs licensed under § 3-9-201 et seq. to obtain a permit for Sunday sales of alcoholic beverages for on-premises consumption.

(b) No hotel, motel, or restaurant shall obtain a permit to sell alcoholic beverages for on-premises consumption on Sundays unless:

(1) It has a valid and current permit that is not suspended, cancelled, or revoked to sell alcoholic beverages for on-premises consumption issued under § 3-5-301 et seq., § 3-9-201 et seq., or § 3-9-301 et seq.;

(2) It is:

(A) Located in a city or county where Sunday sale of alcoholic beverages for on-premises consumption has been approved by the voters of the city or county as authorized under Arkansas law; or

(B) A large attendance facility under § 3-9-202(8)(B) in which pari-mutuel wagering has been authorized by law;

(3) It meets all the requirements of being a hotel or a restaurant as those items are defined in § 3-9-402; and

(4) It pays the required fee for a permit as required in this section and § 3-9-407.

(c) However, any hotel or restaurant having been in operation for less than ninety (90) days and without prior business experience on which to determine the gross sales requirements for hotels and restaurants, as defined in § 3-9-402, may be issued a temporary Sunday sales permit to sell alcoholic beverages for on-premises consumption on Sundays for a period not to exceed ninety (90) days. The temporary ninety-day time period is to be used to allow the business establishment to make a determination of its gross sales. The fee for the temporary Sunday sales permit shall be twenty-five dollars (\$25.00).

History. Acts 1987, No. 766, § 3; 1995, No. 563, § 3; 2007, No. 1017, § 3. added the (b)(2)(A) designation; added (b)(2)(B); and made related changes.

Amendments. The 2007 amendment

3-9-405. Permit — Application.

(a) Any hotel or restaurant as defined in § 3-9-402 desiring to sell alcoholic beverages for on-premises consumption on Sundays shall make application to the Director of the Alcoholic Beverage Control Division for a permit upon the forms prescribed and furnished by the

director and in accordance with the rules and regulations of the Alcoholic Beverage Control Board. The board shall have authority to require an applicant under oath to disclose the following information:

- (1) The name of the applicant;
 - (2) The location of the hotel or restaurant;
 - (3) Sufficient data to establish that the applicant meets the requirements of §§ 3-9-402 and 3-9-404;
 - (4) The names and addresses of all owners of the hotel or restaurant;
 - (5) That the applicant is a citizen or resident alien of the United States and a resident of Arkansas on the date of application, and if a corporation, duly qualified to do business in this state;
 - (6) That neither the applicant nor any person to be employed in the serving of beverages authorized herein shall be a person who has been convicted within five (5) years of the date of his or her employment of any violation of the laws against possession, sale, manufacture, or transportation of intoxicating liquor, or convicted of a felony;
 - (7) That the manager or operator of the hotel or restaurant seeking the permit is of good moral character and not a convicted felon; and
 - (8) Such other relevant information as may be required.
- (b) Every permit issued under this subchapter shall be for an indeterminate period, subject to compliance with the annual renewal requirements prescribed in this subchapter, and shall not be transferable or assignable as to owner or premises, except upon the written approval of the director.

History. Acts 1987, No. 766, § 4; 1991, No. 606, § 9.

Publisher's Notes. Acts 1991, No. 606, § 11, provided: "It is the intent of this law to no longer require citizenship of the United States in order for a person to hold certain ABC licenses and to eliminate the requirement that persons be a resident of the State of Arkansas for two (2) years prior to the time that they make application for an ABC license. It is also the intent of this law that persons no longer be required to be registered voters in the county in which the permit is located and it is further intended that a person must either reside in the county where the premises is located or live within twenty-five (25) miles of the address of the per-

mitted outlet. It is also the intent of this legislation that proof of payment of personal property taxes to the individual counties will no longer be required in order for a person to apply for or renew an ABC license. It is the further intent of this law that various application requirements regarding convicted felon status, status as it relates to violation of liquor laws of this state or any other state and revocation of permits shall be made uniform among various permits issued by the ABC Division. Therefore, any laws that may conflict with this act shall be and the same hereby are repealed."

Cross References. Registration, certification, and licensing for criminal offenders, § 17-1-103.

3-9-406. Consent to inspection.

No permit shall be issued under this subchapter unless the permittee has consented in writing that the permitted premises and its books and records shall be open at all times to all law enforcement and tax officials and officials of the Alcoholic Beverage Control Board and the Director of

the Department of Finance and Administration without requirement of warrant or other legal process.

History. Acts 1987, No. 766, § 5.

3-9-407. Fees for permit.

(a) Each application for a Sunday sales permit shall be accompanied by a permit fee in the following applicable amount:

- (1) Hotel, having fewer than one hundred (100) rooms \$100.00
- (2) Hotel, having one hundred (100) or more rooms 200.00
- (3) Restaurant, having a seating capacity
of less than one hundred (100) persons 100.00
- (4) Restaurant, having a seating capacity
of one hundred (100) or more persons 200.00

(b) An annual renewal fee in the same amount as provided in subsection (a) of this section shall be paid to the Director of the Alcoholic Beverage Control Division on or before June 30 of each calendar year for the fiscal year beginning July 1.

(c) The fee for permits issued between January 1 and July 1 shall be one-half ($\frac{1}{2}$) of the amount specified in subsection (a) of this section.

(d) The fees required in this section are supplemental to the fees and taxes levied by § 3-5-301 et seq., § 3-9-201 et seq., and § 3-9-301 et seq., and do not relieve any restaurant or hotel from paying permit or renewal fees or supplemental gross receipts taxes levied by the State of Arkansas for sales of alcoholic beverages for on-premises consumption made on Sunday.

History. Acts 1987, No. 766, § 6; 1995, No. 563, § 4; 1999, No. 319, § 3.

3-9-408. Rules and regulations.

The Alcoholic Beverage Control Board is authorized to adopt and enforce reasonable rules and regulations governing the qualifications for Sunday sales permits under this subchapter, the operation of permitted premises on Sundays, and otherwise implementing and effectuating the provisions and purposes of this subchapter to ensure the strict enforcement of the law. The rules and regulations promulgated under this subchapter shall be supplemental and in addition to the rules and regulations promulgated to regulate the sale of alcoholic beverages for on-premises consumption at hotels and restaurants under § 3-9-201 et seq.

History. Acts 1987, No. 766, § 7.

3-9-409. Suspension, etc., of permit — Appeals.

Upon his or her own complaint or that of any law enforcement agency having jurisdiction over the permitted premises, the Director of the Alcoholic Beverage Control Division may suspend, cancel, or revoke any

permit granted under this subchapter for violation by the permittee of any provisions of this subchapter or any rule, regulation, or order of the Alcoholic Beverage Control Board. No permit shall be suspended, cancelled, or revoked except after hearing by the director with reasonable notice to the permittee and an opportunity for him or her to appear and defend himself or herself as provided in § 3-2-212. Appeals to the board from an order by the director of a suspension, cancellation, or revocation of a permit may be made as provided in § 3-2-215. Appeals from a board decision to the Pulaski County Circuit Court may be made as provided in § 3-2-216.

History. Acts 1987, No. 766, § 8.

3-9-410. Grounds for suspension, etc., of permit.

(a) Sunday sale permits may be suspended, cancelled, or revoked:

(1) If the permittee no longer meets the requirements of the definition of a hotel or a restaurant under § 3-9-402;

(2) If the permit for on-premises consumption of alcoholic beverages issued under § 3-5-301 et seq., § 3-9-201 et seq., or § 3-9-301 et seq. is suspended, cancelled, or revoked for causes thereunder;

(3) If the permittee's restaurant or hotel is located in a city or county where Sunday sales are not authorized or are no longer authorized under Arkansas law;

(4) If the permittee willfully fails to keep any records or make any reports required by this subchapter or by rules or regulations adopted thereunder; or

(5) If the permittee makes any materially false statement in any application for a permit.

(b) If any permittee shall fail to remit any fee levied in this subchapter for the permit or for the annual renewal, the permit shall be revoked. The permit may be restored if the renewal fee is paid within thirty (30) days from the date on which due.

History. Acts 1987, No. 766, § 9; 1995, No. 563, § 5.

3-9-411. Sale of beer and wine.

(a) Any permit for Sunday sales of alcoholic beverages for on-premises consumption shall include authority to sell beer for consumption and to sell native and imported wine by the drink as permittees, licensed under § 3-9-201 et seq., are authorized to do in § 3-9-211.

(b) However, nothing in this subchapter shall authorize holders of permits for on-premises consumption of alcoholic beverages on Sundays to sell or to dispense alcoholic beverages by the package or by the bottle for consumption off the permitted premises.

History. Acts 1987, No. 766, § 10; 1995, No. 563, § 6.

3-9-412. Disposition of fees.

(a) All permit fees collected for the state pursuant to this subchapter shall be remitted monthly to the State Treasury as general revenues and be credited to the State Apportionment Fund.

(b) The fees shall be allocated and transferred to the various funds, fund accounts, and accounts participating in general revenues in the respective portions to each as provided by and to be used for the respective purposes set forth in the Revenue Stabilization Law, § 19-5-101 et seq.

History. Acts 1987, No. 766, § 12.

3-9-413. Exemptions.

(a) Any person who on March 1, 1989, holds a Sunday sales permit under this subchapter and who has annual gross sales of food, food items, and nonalcoholic beverages of ninety thousand dollars (\$90,000) per year shall not be required to meet the requirements of § 3-9-402(8)(H) relating to gross sales.

(b) Any person who on March 1, 1989, holds a Sunday sales permit under this subchapter and whose business is located in a municipality having a population of one hundred thousand (100,000) or more according to the most recent decennial census shall not be required to meet the requirements of § 3-9-402(8)(H) relating to gross sales.

History. Acts 1989, No. 868, § 3.

A.C.R.C. Notes. Acts 1989, No. 868, § 2, provided: "Any person, who on July 3, 1989, holds a Sunday sales permit under § 3-9-401 et seq. shall not be disqualified from holding the permit because of the provisions of this act for a period of one year. During the one year period, the

person may hold the permit under the provisions of § 3-9-401 et seq. as it existed immediately before the effective date of this act."

References to "this subchapter" in §§ 3-9-401 — 3-9-412 may not apply to this section which was enacted subsequently.

SUBCHAPTER 5 — SUNDAY BEER AND WINE PERMIT

SECTION.

3-9-501. Definitions.

3-9-502. Applicability of § 3-9-401 et seq.

3-9-503. Permit — Requirements.

3-9-504. Permit — Application.

SECTION.

3-9-505. Fees for permit.

3-9-506. Referendum.

3-9-507. Sunday sales — Hours of operation.

A.C.R.C. Notes. References to "this chapter" in subchapters 1-4 may not apply

to this subchapter which was enacted subsequently.

RESEARCH REFERENCES

Am. Jur. 45 Am. Jur. 2d, Int. Liq.,
§§ 260, 278, 279.
73 Am. Jur. 2d, Sun. & H., §§ 27, 43.

C.J.S. 17A C.J.S., Contr., § 289.
83 C.J.S., Sunday, § 17.

3-9-501. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Beer" means any fermented liquor made from malt or any substitute thereof and having an alcoholic content of more than one-half of one percent (0.5%) of alcohol by weight but not in excess of five percent (5%) by weight;

(2) "Wine" means any light wine, port wine, sherry, vermouth, or any other wine, the alcoholic content of which is more than one-half of one percent (0.5%) of alcohol by weight and which does not exceed twenty-one percent (21%) of alcohol by weight, regardless of whether the wine is manufactured within or without the State of Arkansas;

(3) "Director" means the Director of the Department of Alcoholic Beverage Control;

(4) "Board" means any Alcoholic Beverage Control Board of this state or any successor agency;

(5) "Hotel" has the same meaning as prescribed by § 3-9-402(4); and

(6) "Restaurant" means any public or private place without sleeping accommodations and that place:

(A) Is kept, used, maintained, advertised, and held out to the public or to a private or restricted membership as a place whose primary function and purpose is to take orders for and to serve food and food items;

(B) Actually serves full and complete meals prepared in a fully equipped and sanitary kitchen and prepared from uncooked foods for service to and consumption by its guests or members on the premises;

(C) Has employed a sufficient number and kind of employees to prepare, cook, and serve suitable foods to its guests or members;

(D) On Sundays serves alcoholic beverages on-premises only, in conjunction with meals;

(E) Serves food on all days of operations;

(F) Maintains separate sales figures for alcoholic beverages; and

(G) Has gross sales of sixty percent (60%) or more from the sale of food, food items, and nonalcoholic beverages.

History. Acts 1995, No. 715, § 1; 2005, substituted "twenty-one percent (21%)"
No. 1247, § 2. for "fourteen percent (14%)" in (2).

Amendments. The 2005 amendment

3-9-502. Applicability of § 3-9-401 et seq.

The provisions of § 3-9-401 et seq. are applicable to this subchapter to the extent that they are not in conflict herewith.

History. Acts 1995, No. 715, § 5.

3-9-503. Permit — Requirements.

(a) Any hotel or restaurant that is licensed to sell beer and wine for on-premises consumption under § 3-5-201 et seq. and § 3-9-301 et seq. may sell beer and wine for on-premises consumption on Sundays after obtaining a permit, approved and issued by the Director of the Alcoholic Beverage Control Division in accordance with rules and regulations promulgated by the Alcoholic Beverage Control Board, for the sale of beer and wine for on-premises consumption on Sundays.

(b) No hotel or restaurant may obtain a permit to sell beer and wine for on-premises consumption on Sundays unless it:

(1) Has valid and current permits which are not suspended, cancelled, or revoked, to sell beer and wine for on-premises consumption issued under § 3-5-201 et seq. and § 3-9-301 et seq.;

(2) Is located in a city of the first class or second class or county where Sunday sales of beer and wine for on-premises consumption have been approved by the voters of the city or county, said election to be held in conformance with the methods used to call elections under § 3-9-201 et seq.; and

(3) Pays the required fee for a permit as required in this subchapter.

(c)(1) However, any hotel or restaurant having been in operation for less than ninety (90) days and without prior business experience in which to determine the gross sales requirements for hotels and restaurants, as defined in § 3-9-402, may be issued a temporary Sunday sales permit to sell beer and wine for on-premises consumption on Sundays for a period not to exceed ninety (90) days.

(2) The temporary ninety-day time period is to be used to allow the business establishment to make a determination of its gross sales.

(3) The fee for the temporary Sunday sales permit to allow the sale of beer and wine on Sunday in such qualified restaurants or hotels shall be twenty-five dollars (\$25.00).

History. Acts 1995, No. 715, § 2.

3-9-504. Permit — Application.

(a) Any hotel or restaurant desiring to sell beer and wine only for on-premises consumption shall make application to the Director of the Alcoholic Beverage Control Division for a permit upon forms prescribed and furnished by the director in accordance with the rules and regulations of the Alcoholic Beverage Control Board.

(b) No applicant shall be authorized to make any such sales until a permit is approved and issued by the director.

(c) The board shall have authority to require an applicant, under oath, to disclose the following information:

- (1) The name of the applicant;
- (2) The location of the hotel or restaurant;
- (3) Sufficient data to establish that the applicant meets the requirements of § 3-9-402;
- (4) The names and addresses of all owners of the hotel or restaurant;
- (5) That the applicant is a citizen or resident alien of the United States and a resident of Arkansas on the date of application and, if a corporation, qualified to do business in this state;
- (6) That neither the applicant nor any person to be employed in the serving of the beverages authorized herein shall be a person who has been convicted within five (5) years of the date of his or her employment of any violations of the laws against possession, sale, manufacture, or transportation of intoxicating liquor or convicted of a felony;
- (7) That the manager or operator of the hotel or restaurant seeking the permit is of good moral character and is not a convicted felon; and
- (8) Other such relevant information as may be required.

(d) Every permit issued under this subchapter shall be for an indeterminate period, subject to compliance with the annual renewal requirements herein prescribed and shall not be transferable or assignable as to owner or premises, except upon the written approval of the director.

History. Acts 1995, No. 715, § 3.

3-9-505. Fees for permit.

(a) Each application for a Sunday sales permit shall be accompanied by a permit fee in the following applicable amount:

- | | |
|--|----------|
| (1) Hotel, having fewer than one hundred (100) rooms | \$100.00 |
| (2) Hotel, having one hundred (100) or more rooms | 200.00 |
| (3) Restaurant, having a seating capacity | |
| of less than one hundred (100) persons | 100.00 |
| (4) Restaurant, having a seating capacity | |
| of one hundred (100) or more persons | 200.00 |

(b) An annual renewal fee in the same amount as provided in subsection (a) of this section shall be paid to the Director of the Alcoholic Beverage Control Division on or before June 30 of each calendar year.

(c) The fee for a permit issued between January 1 and July 1 shall be one-half (½) of the applicable amount specified in subsection (a) of this section.

History. Acts 1995, No. 715, § 4.

A.C.R.C. Notes. As enacted by Acts

1995, No. 715, subsection (b) ended: "for the fiscal year beginning July 1."

3-9-506. Referendum.

(a) A referendum election authorizing the Sunday sale of beer and wine in hotels and restaurants as defined herein for on-premises consumption in any city of the first class or city of the second class or any county which already authorizes the sale of intoxicating beverages may be held under the general provisions of § 3-9-201 et seq.

(b) On the ballot for the election shall be printed substantially the following:

[] FOR THE SALE OF BEER AND WINE FOR ON-PREMISES CONSUMPTION ON A SUNDAY IN QUALIFIED HOTELS AND RESTAURANTS IN (NAME OF CITY OR COUNTY), ARKANSAS, AS AUTHORIZED BY LAW.

[] AGAINST THE SALE OF BEER AND WINE FOR ON-PREMISES CONSUMPTION ON A SUNDAY IN QUALIFIED HOTELS AND RESTAURANTS IN (NAME OF CITY OR COUNTY), ARKANSAS, AS AUTHORIZED BY LAW.

(c) To the extent not in conflict herewith, the referendum provisions of § 3-9-201 et seq. shall apply to this law.

History. Acts 1995, No. 715, § 6.

3-9-507. Sunday sales — Hours of operation.

The Sunday hours of operation for the Sunday beer and wine permit shall be the same hours of operation established for Sunday mixed drink permits as set by § 3-9-215.

History. Acts 1995, No. 715, § 7.

SUBCHAPTER 6 — WINE AND BEER ON-PREMISES LICENSE**SECTION.**

3-9-601. Definitions.

3-9-602. Sale by licensed facility authorized — Restrictions.

3-9-603. License applications — Qualifications.

SECTION.

3-9-604. Prohibited acts.

3-9-605. Penalties.

3-9-606. Revocation or suspension of license.

3-9-601. Definitions.

As used in this subchapter:

(1) "Director" means the Director of the Alcoholic Beverage Control Division;

(2)(A) "License" means a license to sell wine for consumption on the premises.

(B)(i) An annual fee of three hundred dollars (\$300) shall be paid for each license or renewal thereof.

(ii) All moneys derived from such fees shall be deposited in the State Treasury as general revenues to the credit of the State Apportionment Fund;

(3) "Person" means any person, firm, partnership, association, or corporation; and

(4) "Wine" or "wines" means any port, sherry, vermouth, or other wine, the alcoholic content of which does not exceed twenty-one percent (21%) by weight, regardless of whether the wines are manufactured within or without the State of Arkansas.

History. Acts 1999, No. 856, § 1; 2005, substituted "twenty-one percent (21%)" No. 1247, § 3. for "fourteen percent (14%)" in (4).

Amendments. The 2005 amendment

3-9-602. Sale by licensed facility authorized — Restrictions.

(a) It shall be lawful for any facility in this state to sell wines for consumption on the premises upon obtaining a license from the Director of the Alcoholic Beverage Control Division and paying the fee therefor, as provided in this subchapter.

(b) However, it shall be unlawful for the director to issue any license to a facility for sales of wine for consumption on the premises in any city, county, township, or other area in this state wherein the sale and possession of wines is unlawful.

(c) All licenses shall be renewed annually in the manner as is provided by law.

History. Acts 1999, No. 856, § 3.

3-9-603. License applications — Qualifications.

(a) No license shall be issued to any person authorizing the sale of wine at retail for consumption on the premises unless the person shall file with the Director of the Alcoholic Beverage Control Division a verified application therefor accompanied by the fee required by law and shall state in the application that he or she possesses the following qualifications:

(1) The applicant is a person of good moral character, a citizen or resident alien of the United States, and a resident of the county in which the permit will be operated or resides within thirty-five (35) miles of the address of the premises described in the application;

(2) The applicant must be a resident of the State of Arkansas on the date of the application and maintain such residency within the state as a continuing qualification to hold the permit issued by the director;

(3) The applicant has never been convicted of a felony or has not been convicted within five (5) years of the date of his or her application of any violation of the laws of this state or any other state relating to alcoholic beverages;

(4) The applicant has not had revoked within five (5) years immediately preceding his or her application any license issued to him or her

pursuant to the laws of this state or any other state to sell alcoholic liquor of any kind;

(5) The applicant must be the owner of the premises for which the license is sought or the holder of an existing lease, buy-sell agreement, offer and acceptance, or option to lease thereon;

(6) If the applicant is a copartner, all members of the copartnership must be qualified to obtain a license; and

(7)(A) If the applicant is a corporation, all officers and directors thereof, any stockholder owning more than five percent (5%) of the stock of such corporation, and the person or persons who shall conduct and manage the licensed premises for the corporation shall possess all the qualifications required herein for an individual license.

(B) The requirement as to residence shall not apply to officers, directors, and stockholders of the corporation, but the requirement shall apply to any officer, director, or stockholder who is also the manager of the licensed premises in any capacity in the conduct or operation of the licensed premises.

(b) Any misstatement or concealment of fact in the application shall be grounds for the revocation of any license issued pursuant to the application.

History. Acts 1999, No. 856, § 4.

3-9-604. Prohibited acts.

No holder of a license authorizing the sale of wine for consumption on the premises where sold nor any servant, agent, or employee of the licensee shall do any of the following upon the licensed premises:

(1) Knowingly sell wine to a minor;

(2) Knowingly sell wine to any person while the person is in an intoxicated condition;

(3) Sell wine upon the licensed premises or permit wine to be consumed thereon on any day or at any time when the sale or consumption is prohibited by law; or

(4) Permit on the licensed premises any disorderly conduct, breach of the peace, or any lewd, immoral, or improper entertainment, conduct, or practices.

History. Acts 1999, No. 856, § 5.

3-9-605. Penalties.

If any facility licensed under this subchapter to sell wine for consumption on the premises shall violate any of the provisions of this subchapter or any of the provisions of other laws of this state regarding the sale of wine at retail, the owner or operator of the facility shall be guilty of a Class B misdemeanor.

History. Acts 1999, No. 856, § 2; 2005, inserted "Class B"; and deleted former (b) No. 1994, § 377.

Amendments. The 2005 amendment

3-9-606. Revocation or suspension of license.

Proceedings for the revocation or suspension of any license issued pursuant to the provisions of this subchapter shall be in the same manner as is provided by law for revocation or suspension of licenses for the sale of beer for consumption on the premises.

History. Acts 1999, No. 856, § 6.

Index to Titles 1-3

A

ABANDONMENT.

Bees and honey.

- Abandoned apiary.
- Defined, §2-22-101.

ACCOMPLICES AND ACCESSORIES.

Alcoholic beverages.

- Prohibited acts and practices.
- Accessories guilty as principals, §3-3-101.

ACCOUNTS AND ACCOUNTING.

Beef council fund.

- National beef promotion account.
 - Creation of account in fund, §2-35-406.
- State beef promotion account.
 - Creation of account, §2-35-407.

Beef promotion and research.

- National beef promotion account.
 - Creation, §2-35-406.
- State beef promotion account.
 - Creation, §2-35-407.

Cattle.

- National beef promotion account.
 - Creation, §2-35-406.
- State beef promotion account.
 - Creation, §2-35-407.

Livestock shows.

- Reports.
 - Accounting reports by recipients of funds, §2-36-211.

ACTIONS.

Agricultural cooperative associations.

- Power to sue and be sued, §2-2-106.

Agriculture.

- Foreign investment.
 - Private right of enforcement, §2-3-106.

Nuisances.

- Agricultural facilities.
 - Actions for injuries or damages not affected, §2-4-106.

Alcoholic beverages.

- Wholesalers' protection from arbitrary actions of suppliers.
- Civil action for violations, §3-5-1106.

ACTIONS —Cont'd

Livestock.

- Running at large.
- Refusal to deliver to owner.
- Right of action, §2-38-116.

Livestock and poultry commission.

- Cremation of dead animals.
- Civil actions for violations of requirement, §2-40-303.

Livestock or poultry production contracts.

- Violations, §2-32-201.

Nuisances.

- Agricultural facilities.
 - Actions for injuries or damages not affected, §2-4-106.

Rice certification act.

- Civil action, relief authorized, §2-15-206.

Seeds.

- Arbitration of defective seed claims.
- Evidence.
 - Investigation and report for arbitration committee.
 - Findings, §2-23-107.
- Prerequisite to legal action, §2-23-102.
- Notice not typed on container or label.
- Compliance with section not required, §2-23-102.

Statutes.

- Effect of adoption of code on existing actions, §1-2-111.
- Repeal.
 - Existing actions not affected by repeal, §1-2-120.

ADMINISTRATIVE PROCEDURE.

Alcoholic beverages.

- Beer.
- Retailers.
- Licenses.
 - Appeals governed by administrative procedure act, §3-5-306.

Grain.

- Receiver for grains stored in public warehouses.
- Applicability of administrative procedure act to actions of commissioner, §2-17-408.

ADULTERATION.**Commercial feeds, §2-37-107.**

Prohibited acts, §2-37-108.

Pesticides.

Definition of adulteration, §2-16-403.

Unlawful acts, §2-16-411.

Soil amendment.

Definition of adulteration, §2-19-402.

ADVERTISING.**Alcoholic beverages.**

Materials displayed by franchisee of racing commission, §3-3-212.

Nonresident beer sellers, §3-5-1305.

Private clubs, §3-9-226.

Livestock.

Running at large.

Advertisements of taker-up to be posted, §2-38-111.

Payment of expenses, §2-38-113.

Penalty for failure to advertise, §2-38-111.

Publication in addition to posting, §2-38-112.

Private clubs.

Alcoholic beverages, §3-9-226.

Rice research and promotion act.

Research, market development and advertising program, §2-20-510.

Seeds.

False advertising, §2-18-102.

Fees for promotion and advertising, §2-18-105.

Wheat promotion act.

Research, extension, market development and advertising program.

Generally, §2-20-609.

AFLATOXIN.**Arkansas-grown seed and grain.**

Monitoring by plant board, §2-18-109.

Rulemaking regarding aflatoxin, §2-18-111.

Sampling methods for testing, §2-18-110.

AGENTS.**Agriculture.**

Emergency plant act.

Act of agent or employee deemed act of principal, §2-16-305.

Grading of products and containers.

Act of agent or employee deemed act of principal, §2-20-117.

Plant board.

Act of employee or agent deemed act of principal, §2-16-204.

Alcoholic beverages.

Enforcement agents.

Authority, §3-2-210.

AGENTS —Cont'd**Pest control.**

Act of employee or agent deemed act of principal, §2-16-204.

Wheat promotion board.

Resident agent for service of process, §2-20-610.

AGRICULTURAL COOPERATIVE ASSOCIATIONS.**Actions.**

Power to sue and be sued, §2-2-106.

Activities authorized, §§2-2-105, 2-2-106.

Admission of members, §2-2-107.

Advanced biofuels facilities.

Defined, §2-8-102.

Tax credit, §§2-8-106, 2-8-109.

Eligibility, §2-8-106.

Agricultural products.

Defined, §2-2-102.

Amendments to articles of association, §2-2-109.

Filing fees, §2-2-124.

Applicability of provisions, §2-2-301.

Articles of association.

Amendments, §2-2-109.

Filing fees, §2-2-124.

Contents, §2-2-108.

Fees.

Filing fees, §2-2-124.

Subscription, §2-2-108.

Assets.

Merger or consolidation.

Rights of members and others in mergers, consolidations, sale or lease of assets, §2-2-313.

Mortgage, §2-2-310.

Rights of members and others, §2-2-313.

Sale in regular course of business, §2-2-311.

Sale or lease other than in regular course of business, §2-2-312.

Bylaws.

Adoption, §2-2-110.

Amendments, §2-2-110.

Majority vote sufficient for adoption, §2-2-110.

Contents, §2-2-110.

Damages.

Fixed and liquidated damages, §2-2-117.

Quorum for stockholders' meetings, §2-2-110.

Certificates of membership.

Fees, §2-2-114.

Construction of act, §2-2-103.

AGRICULTURAL COOPERATIVE ASSOCIATIONS —Cont'd

Contracts.

- Breach of contract.
 - Bylaws may fix liquidated damages, §2-2-117.
 - Penalty for inducing, §2-2-118.
 - Remedy, §2-2-117.
- Marketing contracts, §2-2-116.
- Participation contracts, §2-2-116.
- Power to contract, §2-2-106.
- Restraint of trade, §2-2-122.

Cooperative marketing associations.

- General provisions, §§2-2-401 to 2-2-430.

Corporations.

- Application of general corporation laws, §2-2-119.
- Interest in other corporations or associations, §2-2-120.

Damages.

- Liquidated damages.
 - Remedies for breach of contract, §2-2-117.

Debts.

- Liability of members for debts of association, §2-2-114.

Definitions, §2-2-102.

Directors.

- Appointment, §2-2-112.
- Compensation, §2-2-112.
- Election, §2-2-112.
- Executive committee, §2-2-112.
- Number of directors, §2-2-112.

Election.

- Directors, §2-2-112.

Existing associations.

- Adoption of provisions of act, §2-2-121.

Fees.

- Annual license fee.
 - Payment to secretary of state, §2-2-123.
- Filing fees, §2-2-124.
- Existing entities, §2-2-121.

General corporation laws.

- Application, §2-2-119.

Investments.

- Reserves.
 - Power to establish and invest, §2-2-106.

Legislative declaration.

- Purposes of provisions, §2-2-101.

Marketing associations, §§2-2-401 to 2-2-430.

Matters referred to membership, §2-2-115.

AGRICULTURAL COOPERATIVE ASSOCIATIONS —Cont'd

Meetings.

- Notice.
 - Regular and special meetings, §2-2-111.
- Regular meetings.
 - Notice, §2-2-111.
- Special meetings.
 - Notice, §2-2-111.

Members.

- Defined, §2-2-102.
- Matters referred to entire membership, §2-2-115.
- Persons who may be members, §2-2-107.
- Transferability of stock certificates, §2-2-107.

Merger and consolidation.

- Applicability of provisions, §2-2-301.
- Approval by members, §2-2-305.
- Approval of time of merger, §2-2-303.
- Articles of consolidation, §2-2-306.
- Articles of merger, §2-2-306.

Assets.

- Mortgage and sale, §2-2-310.
- Rights of members and others in mergers, consolidations, sale or lease of assets, §2-2-313.

Sale and merger, §2-2-310.

- Sale in regular course of business, §2-2-311.

- Sale or lease other than in regular course of business, §2-2-312.

Authorized, §2-2-303.

- Continuance of association existence in aid of title transfers, §2-2-309.

Domestic and foreign associations, §2-2-308.

Effect of consolidation, §2-2-307.

Effect of merger, §2-2-307.

Elections, §2-2-305.

Notice to member, §2-2-305.

Plans.

- Approval by board of directors, §§2-2-303, 2-2-304.

Procedure, §§2-2-303, 2-2-304.

Provisions supplemental, §2-2-302.

- Rights of members and others in mergers, consolidations, sale or lease of assets, §2-2-311.

Terms and conditions, §2-2-303.

Title.

- Continuance of association existence in aid of title transfers, §2-2-309.

Monopolies.

- Associations and contracts not in restraint of trade, §2-2-122.

AGRICULTURAL COOPERATIVE ASSOCIATIONS —Cont'd

Mortgages and deeds of trust.

Merger or consolidation.

Mortgage and sale of assets,
§2-2-310.

Notice.

Meetings, §2-2-111.

Officers, §2-2-113.

Election, §2-2-113.

Organization.

Number of organizers, §2-2-104.

Reasons for organizing, §2-2-105.

Who may organize, §2-2-104.

Other associations.

Interest in other associations,
§2-2-120.

Penalties.

Inducing breach of contract, §2-2-118.

Person.

Defined, §2-2-102.

Powers.

Generally, §2-2-106.

Property.

Powers as to property, §2-2-106.

Provisions supplemental, §2-2-302.

Purposes of provisions, §2-2-101.

Quorum.

Bylaws.

Stockholders' meetings amending
bylaws, §2-2-110.

Real property.

Powers as to real property, §2-2-106.

Restraint of trade.

Associations and contracts not in
restraint of trade, §2-2-122.

Rights of members and others, §2-2-313.

Saving provisions, §2-2-103.

Stock and stockholders.

Bylaws.

Quorum for stockholders' meetings
amending, §2-2-110.

Certificates of stock.

Transferability, §2-2-107.

Common stock.

Amount owned, §2-2-114.

Matters referred to entire
membership, §2-2-115.

Preferred stock.

Issuance, §2-2-114.

Redemption, §2-2-114.

Voting, §2-2-114.

Taxation.

Compensation tax act.

Associations subject to, §2-2-123.

AGRICULTURE.

Actions.

Foreign investment.

Private right of enforcement,
§2-3-107.

Nuisances.

Agricultural facilities.

Actions for injuries or damages
not affected, §2-4-106.

Agents.

Emergency plant act.

Act of agent or employee deemed act
of principal, §2-16-305.

Grading of products and containers.

Act of agent or employee deemed act
of principal, §2-20-117.

Plant board.

Act of employee or agent deemed act
of principal, §2-16-204.

Appeals.

Grading of products and containers.

Appeals from inspector's decision to
chief inspector, §2-20-114.

Arkansas agriculture recognition day, §1-5-111.

Attorney general.

Emergency plant act.

Duties of attorney general,
§2-16-304.

Bees and honey, §§2-22-101 to 2-22-112.

Biotechnology development and training, §§2-8-101 to 2-8-109.

Boll weevil suppression and eradication.

General provisions, §§2-16-601 to
2-16-617.

Bonds, surety.

Grading of products and containers.

Inspectors and employees, §2-20-110.

Plant board.

Director, §2-16-208.

Bribery.

Grading of products and containers.

Influencing inspector, §2-20-111.

Catfish processor fair practices, §§2-6-101 to 2-6-107.

Catfish promotion board, §§2-9-101 to 2-9-112.

Cedar trees.

Compensation for trees destroyed,
§2-16-101.

Presentation of claims to county court,
§2-16-101.

Claims committee.

Emergency plant act, §2-16-309.

Commercial fertilizers, §§2-19-201 to 2-19-212.

AGRICULTURE —Cont'd**Confidentiality of information.**

Farm mediation.

Disclosure of information, §2-7-202.

Cooperatives.

Agricultural cooperative associations,
§§2-2-101 to 2-2-313.

Cooperative marketing associations,
§§2-2-401 to 2-2-430.

Corn and grain sorghum promotion,

§§2-20-801 to 2-20-806.

Damages.

Grading of products and containers.

Inspectors and employees.

Persons injured by may sue on
bond, §2-20-110.

Definitions.

Emergency plant act, §2-16-302.

Farm mediation, §2-7-102.

Foreign investment, §2-3-102.

Grading of products and containers,
§2-20-102.

Labeling of fruits and vegetables for
interstate shipment, §2-20-302.

Plant act, §2-16-202.

Emergency plant act.

Act supplemental, §2-16-303.

Agents.

Act of agent or employee deemed act
of principal, §2-16-305.

Attorney general.

Duties, §2-16-304.

Claims committee.

Adjustment of claims, §2-16-309.

Chairperson, §2-16-309.

Duties, §2-16-309.

Expenses, §2-16-309.

Membership, §2-16-309.

Quorum, §2-16-309.

Construction of act, §2-16-303.

Definitions, §2-16-302.

Director.

Employees, §2-16-306.

Enforcement of provisions,
§2-16-306.

Governor.

Proclamation of quarantine,
§2-16-307.

Penalties.

Violations of act, §2-16-304.

Prosecuting attorneys.

Duties, §2-16-304.

Quarantine.

Governor's proclamation, §2-16-307.

Rules and regulations, §2-16-308.

Reports.

Annual report of board, §2-16-310.

Rights of inspection, §2-16-306.

AGRICULTURE —Cont'd**Emergency plant act —Cont'd**

Short title, §2-16-301.

Subpoenas.

Power to require production of
documents, §2-16-306.

Treatment or destruction of plants or
products, §2-16-308.

Violations.

Penalty for violation of act,
§2-16-304.

Witnesses.

Power of board to summon,
§2-16-306.

Evidence.

Grading of products and containers.

Certificates prima facie evidence of
grade, §2-20-115.

Farm mediation.

Administration of program, §2-7-201.

Agreements.

Execution, §2-7-309.

Applicability of chapter.

Exemptions, §2-7-306.

Attorneys at law.

Right to attorney, §2-7-308.

Citation of chapter, §2-7-101.

Confidentiality of information,
§2-7-202.

Definitions, §2-7-102.

Disclosure of information, §2-7-202.

Exemptions from chapter, §2-7-306.

Forms, §2-7-203.

Mandatory mediation, §2-7-303.

Voluntary mediation.

Application and request forms,
§2-7-301.

Information on services, §2-7-305.

Mandatory mediation.

Notice, §2-7-303.

Mediators.

Assignment, §2-7-305.

Duties, §2-7-308.

Meetings.

Initial meeting, §2-7-307.

Subsequent meetings, §2-7-307.

Mortgages and deeds of trust.

Foreclosure.

Release prerequisite to, §2-7-302.

Office.

Administration of program,
§2-7-201.

Creation, §2-7-201.

Release.

Effective period, §2-7-310.

Issuance, §2-7-310.

Prerequisite to foreclosure,
termination, etc., §2-7-302.

AGRICULTURE —Cont'd**Farm mediation —Cont'd**

Requests for mediation.

Form and contents, §2-7-304.

Service, §2-7-304.

Short title of chapter, §2-7-101.

Voluntary mediation, §2-7-301.

Farm products.

Agricultural cooperative associations,
§§2-2-101 to 2-2-313.

Cooperative marketing associations
generally, §§2-2-401 to 2-2-430.

Fertilizers.

General provisions, §§2-19-201 to
2-19-212.

Natural organic fertilizers, §§2-19-501
to 2-19-503.

**Fire ant poison cost sharing
program.**

Creation, §2-16-105.

Quarantine costs.

Recovery, §2-16-106.

Rules and regulations, §2-16-107.

Fish farming.

Domestic fish farming, §§2-5-101 to
2-5-103.

Foreign investments.

Acquisition by enforcement of lien,
§2-3-105.

Actions.

Failure to register.

Attorney general to institute
action, §2-3-106.

Private right of enforcement,
§2-3-107.

Agricultural land.

Acquiring or holding land in
violation of act.

Declaratory judgment of court,
§2-3-106.

Defined, §2-3-102.

Foreign acquirers to register with
clerk, §2-3-103.

Aliens.

Full ownership rights in nonfarm
lands, §2-3-109.

Applicability of act, §2-3-108.

Citation of act, §2-3-101.

Declaratory judgments.

Acquiring or holding land in
violation of act, §2-3-106.

Definitions, §2-3-102.

Enforcement.

Private right of enforcement,
§2-3-107.

Exceptions, §2-3-108.

Land used for nonfarming purposes
and mineral leases, §2-3-110.

AGRICULTURE —Cont'd**Foreign investments —Cont'd**

Foreign governments.

Defined, §2-3-102.

Liens.

Acquisition by enforcement of lien,
§2-3-105.

Loans.

Foreign investor's right to loan to
Arkansas farmers, §2-3-104.

Mineral leases.

Exception for land used for mineral
leases, §2-3-110.

Nonfarm lands.

Aliens to have full ownership rights,
§2-3-109.

Party.

Defined, §2-3-102.

Foreign party.

Defined, §2-3-102.

Penalties.

Failure to register, §2-3-106.

Registration.

Failure to register.

Penalty, §2-3-106.

Foreign acquirers of agricultural
land to register with clerk,
§2-3-103.

Short title of act, §2-3-101.

Title.

Short title of act, §2-3-101.

Forms.

Farm mediation, §2-7-203.

Mandatory mediation, §2-7-303.

Voluntary mediation.

Application and request forms,
§2-7-301.

Ginseng.

General provisions, §§2-20-701 to
2-20-705.

Governor.

Emergency plant act.

Proclamation of quarantine,
§2-16-307.

Grading of products and containers.

Agents.

Act of agent deemed act of principal,
§2-20-117.

Agricultural products.

Defined, §2-20-102.

Appeals.

Inspector's decision.

Appeals to chief inspector,
§2-20-114.

Bonds, surety.

Inspectors and employees, §2-20-110.

Bribery.

Influencing inspectors, §2-20-111.

AGRICULTURE —Cont'd**Grading of products and containers**

—Cont'd

Certificates.

Prima facie evidence of grade,
§2-20-115.

Citation, §2-20-101.

Definitions, §2-20-102.

Director.

Appeals.

Inspector's decision, §2-20-114.

Compensation, §2-20-109.

Designation of inspectors or
employees, §2-20-109.

Licenses, §2-20-109.

Evidence.

Certificate prima facie evidence of
grade, §2-20-115.

Fees.

Assessment or collection, §2-20-109.

Disposition of fees collected,
§2-20-112.

Inspections.

Authorized, §2-20-113.

Improper inspection, §2-20-111.

Improperly influencing inspector,
§2-20-111.

Right of entry, §2-20-113.

Inspectors and employees.

Acts of agents or employees deemed
act of principal, §2-20-117.

Appointment, §2-20-110.

Bonds, surety, §2-20-110.

Damages, §2-20-110.

Improperly influencing inspectors,
§2-20-111.

Licenses, §2-20-109.

Licenses.

Suspension or revocation, §2-20-109.

Manufacture or sale of containers.

Noncompliance with standards,
§2-20-107.

Misdemeanors.

Penalty for violations, §2-20-103.

Misrepresentation, §2-20-116.

Notice.

Adoption or modification of
standards, §2-20-105.

Persons.

Defined, §2-20-102.

Places.

Defined, §2-20-102.

Plant board.

Cooperation with United States,
§2-20-106.

Fees.

Assessment or collection,
§2-20-109.

AGRICULTURE —Cont'd**Grading of products and containers**

—Cont'd

Plant board —Cont'd

Rules and regulations, §2-20-112.

Standards and classifications.

Promulgation by plant board,
§2-20-104.

Rules and regulations.

Promulgation by board, §2-20-112.

Sales.

Containers not complying with
standard, §2-20-107.

Ungraded products.

Sale by grade or classification,
§2-20-108.

Short title, §2-20-101.

Standards and classifications.

Adoption or modification, §2-20-106.

Notice, §2-20-105.

Manufacture or sale of containers
not complying, §2-20-107.

Promulgated by plant board,
§2-20-104.

Tolerances, §2-20-104.

Variations, §2-20-104.

Title.

Short title, §2-20-101.

Ungraded products.

Sale by grade or classification
unlawful, §2-20-108.

United States.

Cooperation with United States,
§2-20-106.

Federal standards, §2-20-106.

Violations.

Penalty, §2-20-103.

Income tax.

Biotechnology development and
training.

Tax credits, §§2-8-103 to 2-8-108.

Inspections.

Emergency plant act.

Fruits and vegetables for interstate
shipment, §2-20-310.

Rights of inspection, §2-16-306.

Fees.

Board may require payment,
§2-16-209.

Sale, shipment or disposal of plants or
products.

Certificate of inspection required,
§2-16-210.

Irrigation companies.

Discharge of center pivot irrigation
water onto highways, §2-1-101.

Johnson grass control and

eradication, §§2-16-501 to
2-16-511.

AGRICULTURE —Cont'd**Labels.**

- Fruits and vegetables for interstate shipment.
- Administration of act.
- Duties of plant board, §2-20-306.
- Apples.
 - Products to which act applies, §2-20-303.
- Applicability of act.
 - Act limited to Arkansas products, §2-20-303.
 - Products to which act applies, §2-20-303.
- Arkansas products.
 - Limitation of act, §2-20-303.
- Closed containers.
 - Marking, §2-20-307.
- Definitions, §2-20-302.
- Enforcement of act.
 - Duty of plant board, §2-20-306.
- Exceptions.
 - Transactions excepted from act, §2-20-304.
- False representations.
 - Prohibited, §2-20-308.
- Grades.
 - United States grades, §2-20-303.
- Inspections.
 - Powers of plant board, §2-20-310.
- Irish potatoes.
 - Products to which act applies, §2-20-303.
- Marking of closed containers, §2-20-307.
- Misdemeanors.
 - Penalty for violations, §2-20-305.
- Misrepresentation, §2-20-308.
- Peaches.
 - Products to which act applies, §2-20-303.
- Plant board.
 - Administration by plant board, §2-20-306.
 - Enforcement of act, §2-20-306.
 - Inspections, §2-20-310.
- Products to which act applies, §2-20-303.
- Purpose of act, §2-20-301.
- Right of entry, §2-20-310.
- Sanitary requirements.
 - Used containers, §2-20-309.
- Strawberries.
 - Products to which act applies, §2-20-303.
- Title of act, §2-20-301.
- Tomatoes.
 - Products to which act applies, §2-20-303.

AGRICULTURE —Cont'd**Labels —Cont'd**

- Fruits and vegetables for interstate shipment —Cont'd
- Transactions excepted from act, §2-20-304.
- Used containers.
 - Removal of prior markings, §2-20-309.
 - Sanitary requirements, §2-20-309.
- Leases.**
 - Agricultural foreign investment.
 - Exception for land used for mineral leases, §2-3-110.
- Licenses.**
 - Grading of products and containers.
 - Licensing of inspectors, §2-20-109.
- Liens.**
 - Eradication of pests or diseases.
 - Failure to comply with notice, §2-16-211.
 - Foreign investment.
 - Acquisition by enforcement of lien, §2-3-105.
- Liming materials, §§2-19-301 to 2-19-308.**
- Loans.**
 - Foreign investors.
 - Right to loan to Arkansas farmers, §2-3-104.
- Marketing associations.**
 - Agricultural cooperative associations, §§2-2-101 to 2-2-313.
 - Cooperative marketing associations, §§2-2-401 to 2-2-430.
- Mediation.**
 - Farm mediation, §§2-7-101 to 2-7-310.
- Mines and minerals.**
 - Foreign investment.
 - Exception for land used for mineral leases, §2-3-110.
- Misrepresentation.**
 - Grading of products and containers.
 - Misrepresentation as to grade or classification, §2-20-116.
 - Labeling of fruits and vegetables for interstate shipment, §2-20-308.
- Natural organic fertilizers, §§2-19-501 to 2-19-503.**
- Notice.**
 - Grading of products and containers.
 - Standards and classifications.
 - Notice of adoption or modifications, §2-20-105.
- Nuisances, agricultural operations.**
 - Action for injuries or damages not affected, §2-4-106.

AGRICULTURE —Cont'd**Nuisances, agricultural operations****—Cont'd**

Applicability of provisions to contracts,
§2-4-103.

Declaration of policy, §2-4-101.

Definitions, §2-4-102.

Employment of practices commonly or
reasonably associated with
production, §2-4-107.

Establishment prior to commencement
of use of surrounding area,
§2-4-107.

Expert fees, court costs, attorney's
fees.

Awarding to prevailing party,
§2-4-107.

Facilities or appurtenances not to
become nuisance, §2-4-107.

Legislative determinations, §2-4-101.

Liberal construction of chapter,
§2-4-108.

Present or future nuisance ordinances
void, §2-4-105.

**Nursery fraud act, §§2-21-101 to
2-21-113.****Orchards.****Claims.**

Presentation of claims to county
court for destroyed trees,
§2-16-101.

State board of orchard inspection.

Compensation for trees destroyed by
board, §2-16-101.

Ordinances.**Nuisances.**

Agricultural operations.

Present or future nuisance
ordinances void, §2-4-105.

Pear trees.

Compensation for destroyed trees,
§2-16-101.

Presentation of claims to county court,
§2-16-101.

Penalties.

Control of insect pesticides and plant
diseases, §2-16-203.

Emergency plant act.

Violations of act, §2-16-304.

Foreign investment.

Failure to register, §2-3-106.

Grading of products and containers.

Penalty for violation, §2-20-103.

Labeling of fruits and vegetables for
interstate shipment.

Violations of act, §2-20-305.

Pesticides.

Pesticide control, §§2-16-401 to
2-16-419.

AGRICULTURE —Cont'd**Plant act.**

Conflicts with federal law, §2-16-205.

Definitions, §2-16-202.

Short title, §2-16-201.

Title of act, §2-16-201.

Plant board.

Acts of employee or agent deemed act
of principal, §2-16-204.

Alligator weed.

Agreements to hold United States
free from claims, §2-16-103.

Boll weevil suppression and
eradication.

General provisions, §§2-16-601 to
2-16-617.

Composition, §2-16-206.

Created, §2-16-206.

Director, §2-16-208.

Appointment, §2-16-208.

Bond, surety, §2-16-208.

Duties of board, §2-16-207.

Enforcement of act.

Powers of board and inspectors,
§2-16-207.

Established, §2-16-206.

Expenses, §2-16-206.

Facilities, §2-16-206.

Fire ant poison cost sharing program.

Administration, §2-16-105.

Quarantine costs.

Recovery, §2-16-106.

Rules and regulations.

Promulgation, §2-16-107.

Funds of board.

Deposit in plant board fund,
§2-16-104.

Deposit with state treasurer,
§2-16-104.

Operations and facilities
construction fund, §2-16-108.

Ginseng.

General provisions, §§2-20-701 to
2-20-705.

Inspections.

Emergency plant act.

Rights of inspection, §2-16-306.

Johnson grass.

Cooperation of director, §2-16-507.

Meetings, §2-16-206.

Members, §2-16-206.

Monitoring of Aflatoxin, §2-18-109.

Sampling methods, §2-18-110.

Notice.

Eradication of pests and diseases.

Lien for expenses for failure to
comply, §2-16-211.

AGRICULTURE —Cont'd**Plant board —Cont'd**

Notice —Cont'd

Pests or diseases within state,
§2-16-212.

Officers, §2-16-206.

Quorum, §2-16-206.

Reports.

Emergency plant act.

Annual report to governor,
§2-16-310.

Rulemaking regarding aflatoxin,
§2-18-109.

Rules and regulations, §2-16-207.

Review, §2-16-214.

State treasurer.

Deposit of funds with state
treasurer, §2-16-104.

Term of members, §2-16-206.

Trees.

Compensation for trees destroyed,
§2-16-101.

Violations.

Penalties, §2-16-203.

Plant diseases.

Acts not to conflict with federal law,
§2-16-205.

Agents.

Act of employee or agent deemed act
of principal, §2-16-204.

Civil penalties, §2-16-203.

Liens.

Failure to comply with notice,
§2-16-211.

Notice, §2-16-211.

Board to give notice, §2-16-212.

Penalties.

Violations, §2-16-203.

Quarantine.

Emergency plant act, §§2-16-307,
2-16-308.

Receivers.

Duties of receivers of prohibited
plants or products, §2-16-213.

Sale, shipment or disposal of plants or
products, §2-16-210.

Transportation into state prohibited,
§2-16-209.

Quarantine.

Emergency plant act, §§2-16-307,
2-16-308.

Receivers.

Prohibited plants or products.

Duties of receivers, §2-16-213.

Reports.

Emergency plant act.

Annual report of plant board,
§2-16-310.

AGRICULTURE —Cont'd**Research.**

Biotechnology research.

Definition of "qualified research,"
§2-8-103.

Tax credits, §2-8-105.

Corn and grain sorghum promotion
board.

Research and extension program,
§2-20-806.

Crops.

Damage or destruction of field crop
products, §2-15-101.

Rules and regulations.

Grading of products and containers.

Plant board.

Promulgation, §2-20-112.

Plant board, §2-16-207.

Quarantine.

Emergency plant act, §2-16-308.

Searches and seizures.

Pests.

Plant disease, weeds or prohibited
plants brought into state
illegally, §2-16-209.

Seeds, §§2-18-101 to 2-18-111.

Soil amendment, §§2-19-401 to
2-19-414.

Sorghum.

Corn and grain sorghum promotion,
§§2-20-801 to 2-20-806.

Taxation.

Biotechnology development and
training.

Tax credits, §§2-8-103 to 2-8-108.

Transportation.

Plant diseases.

Transportation into state prohibited,
§2-16-209.

Sale, shipment or disposal of plants or
products.

Certificate of inspection, §2-16-210.

Turf grass.

Certification by board, §2-16-109.

United States.

Alligator weed.

Agreements to hold United States
free from claims, §2-16-103.

Grading of products and containers.

Cooperation of board with United
States, §2-20-106.

Federal standards.

Adoption, §2-20-106.

Labeling of fruits and vegetables for
interstate shipment.

United States grades.

Adoption, §2-20-303.

AGRICULTURE —Cont'd**Weeds.**

Johnson grass, §§2-16-501 to 2-16-511.

Wheat.

Wheat promotion act, §§2-20-601 to 2-20-610.

Witnesses.

Emergency plant act.

Power of board to summon witnesses, §2-16-306.

Young and beginning farmer

advisory board, §§2-1-201 to 2-1-206.

ALCOHOLIC BEVERAGES.**Accomplices and accessories.**

Prohibited acts and practices.

Accessories guilty as principals, §3-3-101.

Actions.

Wholesalers' protection from arbitrary actions of suppliers.

Civil action for violations, §3-5-1106.

Administrative personnel.

Beer and light wine.

Employment of additional personnel to enforce subchapter, §3-5-225.

Administrative procedure.

Beer.

Retailers.

Licenses.

Appeals governed by administrative procedure act, §3-5-306.

Advertising.

Materials displayed by franchisee of racing commission, §3-3-212.

Private clubs, §3-9-226.

Agents.

Enforcement agents.

Authority, §3-2-210.

Annexation of dry township into wet city or town.

Local option election, §§3-8-501, 3-8-502.

Antiseptic preparations.

Exempted products, §3-1-103.

Appeals.

Beer.

Retailers.

Licenses, §3-5-306.

Board of alcoholic beverage control.

Conduct of appeal before board, §3-2-215.

Enforcement division.

Review of, §3-2-201.

Licenses.

Denial, suspension or revocation.

Appeal or review by board, §§3-2-213, 3-2-214.

ALCOHOLIC BEVERAGES —Cont'd**Appeals —Cont'd**

Licenses.

Denial, suspension or revocation, §3-2-216.

Board of alcoholic beverage control.

Appeal to board, §3-2-213.

Review by board on own motion, §3-2-214.

Local option elections.

1935 act proceedings.

Contests of elections, §3-8-309.

Initiated act proceedings.

Calling of election, §3-8-205.

On-premises consumption.

Sunday sales.

Permits.

Suspension, cancellation or revocation, §3-9-409.

Permit applications, §3-4-213.

Wholesale dealers and distributors.

Request to change wholesalers, §3-2-406.

Applications.

Permits, §§3-4-208 to 3-4-213, 3-4-219.

Wine.

Incentive grants, §3-5-905.

Subsidies, §3-5-1005.

Arbitration.

Wholesalers' protection from arbitrary actions of suppliers.

Prohibited acts of supplier.

Compensation upon supplier's violation, §3-5-1108.

Attorneys' fees.

Wholesalers' protection from arbitrary actions of suppliers.

Civil action for violations, §3-5-1106.

Auctions.

Charitable auctions.

Wine, §§3-5-1501 to 3-5-1507.

Beer.

Additional administrative personnel.

Employment, §3-5-225.

Appeals.

Retailers.

Licenses, §3-5-306.

Brewery.

Defined, §3-5-202.

Consumer.

Defined, §3-5-202.

Definitions, §3-5-202.

Distribution.

Label submission to division, §3-2-409.

Distribution areas for beer.

Notification of distribution areas, §3-5-103.

ALCOHOLIC BEVERAGES —Cont'd**Beer —Cont'd**

- Distributor.
 - Defined, §3-5-202.
- Festival beer permits, §3-5-105.
- Fines.
 - Miscellaneous prohibited practices, §3-5-221.
- Fire, wreck or casualty.
 - Labeling of beer involved in fire, wreck or casualty, §3-4-104.
- Funds.
 - Disposition, §3-5-224.
- Home-brewed.
 - Defined, §3-5-202.
 - Exemption from privilege tax, §3-5-205.
- Intoxicating liquor.
 - Defined, §3-5-202.
- Kegs.
 - Identification tags or label.
 - Attaching for off-premises consumption, §3-5-227.
- Labels.
 - Sale in original, labeled containers, §3-5-220.
- Legislative declaration.
 - Purpose of subchapter, §3-5-201.
- Licenses.
 - Federal license.
 - Sale of liquor or beer on federal license without state license, §3-3-215.
 - Retail dealers, §§3-5-301 to 3-5-307.
- Local option elections, §3-8-401.
- Misdemeanors.
 - Miscellaneous prohibited practices, §3-5-221.
 - Retailers.
 - Nudity on premises, §3-5-222.
 - Sale or manufacture without state permit, §3-5-210.
- Municipal corporations.
 - Permits.
 - Generally, §3-5-211.
 - Retailers.
 - Permits, §3-5-212.
 - Regulation, §3-5-213.
- Native breweries, §§3-5-1401 to 3-5-1414.
- Nonresident beer sellers' permits, §§3-5-1301 to 3-5-1310.
- Notice.
 - Distribution areas for beer, §3-5-103.
 - Retailers.
 - Licenses.
 - Applications, §3-5-304.

ALCOHOLIC BEVERAGES —Cont'd**Beer —Cont'd**

- Nudity on premises.
 - Retail dealers.
 - Penalty, §3-5-222.
- On-premises consumption.
 - Sunday sales.
 - Permits, §3-9-411.
- Original bottles or packaging.
 - Sale in original, labeled containers, §3-5-220.
- Penalties, §3-5-203.
 - Miscellaneous prohibited practices, §3-5-221.
 - Retailers.
 - Nudity on premises, §3-5-222.
 - Sale or manufacture without state permit, §3-5-210.
 - Transportation.
 - Duplicate bills of lading.
 - Noncompliance with requirements, §3-5-218.
- Permits.
 - Dancing privileges.
 - Inspection fee, §3-5-209.
 - Duration of state permits, §3-5-208.
 - Fees.
 - Dancing privileges.
 - Inspection fee, §3-5-209.
 - Retailers' permits.
 - Counties and municipalities, §3-5-212.
 - State permits.
 - Privilege tax, §§3-5-205, 3-5-208.
 - Transfer of permit inspection fee, §3-5-209.
 - Issuance of state permit, §3-5-206.
- Local permits.
 - Required, §3-5-211.
 - Retailers' permits, §3-5-212.
- Misdemeanors.
 - Sell or manufacture without state permit, §3-5-210.
- Oath by applicant, §3-5-214.
- Retailers.
 - Local permits, §3-5-212.
 - Qualifications, §3-5-215.
 - Scope of state permit, §3-5-207.
 - Transfer of permit, §3-5-209.
- Person.
 - Defined, §3-5-202.
- Privilege tax, §3-5-205.
 - Time for payment, §3-5-208.
- Privilege to manufacture, sell, etc., §3-5-204.
- Prohibited acts and practices.
 - Enumeration of miscellaneous prohibited practices, §3-5-221.

ALCOHOLIC BEVERAGES —Cont'd**Beer —Cont'd**

- Purpose of subchapter, §3-5-201.
- Records, §3-5-219.
- Registration of kegs.
- Off-premises consumption, §3-5-227.
- Reports, §3-5-219.
- Retail dealers, §3-5-213.
 - Defined, §3-5-202.
- Licenses.
 - Applications.
 - Appeals, §3-5-306.
 - Concealment of facts, §3-5-303.
 - Misstatement of facts, §3-5-303.
 - Notice requirements, §3-5-304.
 - Protest, §3-5-305.
 - Qualifications of applicant, §3-5-302.
- Cumulative subchapter, §3-5-301.
- Prohibited acts by licensees, §3-5-307.
- Protest.
 - Applications, §3-5-305.
- Qualifications of applicant, §3-5-302.
- Revocation.
 - Misstatement or concealment of facts in license applications, §3-5-303.
- Subchapter cumulative, §3-5-301.
- Nudity on premises.
 - Penalty, §3-5-222.
- Prohibited acts by licensees generally, §3-5-307.
- Qualifications of retail permittees, §3-5-215.
- Taxation, §3-4-202.
- Rules and regulations.
 - Defined, §3-5-202.
- Excise taxes, §3-7-404.
- Retailers.
 - Nudity on premises, §3-5-222.
 - Regulation by municipal corporations, §3-5-213.
- Sales.
 - Tax on sales.
 - Rate of tax, §3-7-104.
- Storage, §3-5-216.
- Sunday beer and wine permits, §§3-9-501 to 3-9-507.
- Taxation.
 - Actions to recover taxes, §3-5-223.
 - Payment of tax, §§3-7-105, 3-7-401.
 - Penalty for failure to timely pay, §3-7-403.
 - Rules and regulations, §3-7-404.
- Penalties for noncompliance, §3-7-403.

ALCOHOLIC BEVERAGES —Cont'd**Beer —Cont'd**

- Taxation —Cont'd
 - Privilege tax, §3-5-205.
 - Time for payment, §3-5-208.
 - Reports, §§3-7-105, 3-7-401.
 - Penalty for failure to file timely report, §3-7-403.
 - Rules and regulations, §3-7-404.
 - Rules and regulations, §5-7-404.
 - Sale of beer.
 - Rate of tax, §3-7-104.
 - Stamp no longer required, §3-7-105.
- Transportation, §3-5-217.
- Bills of lading.
 - Duplicate bills, §3-5-218.
- Warehouse.
 - Defined, §3-5-202.
- Wholesale dealers and distributors.
 - Defined, §3-5-202.
 - Sale of malt liquors containing more than 5% alcohol, §3-5-101.
- Wholesalers' protection from arbitrary actions of suppliers, §§3-5-1101 to 3-5-1111.
- Beer festival permits, §3-5-105.**
- Block.**
 - Defined, §3-1-102.
- Board of alcoholic beverage control.**
 - Appeals.
 - Conduct of appeal before board, §3-2-215.
 - Enforcement division.
 - Review of, §3-2-201.
 - Licenses.
 - Denial, suspension or revocation.
 - Appeal to board, §3-2-213.
 - Review by board on own motion, §3-2-214.
- Bribery.
 - Solicitation or acceptance of bribe prohibited, §3-2-208.
- Chairman, §3-2-201.
- Compensation, §3-2-201.
- Composition, §3-2-201.
- Creation, §3-2-201.
- Director.
 - Seal of director, §3-2-204.
 - Authentication of records, §3-2-204.
- Division of alcoholic beverage control.
 - Management by board, §3-2-201.
- Expenses, §3-2-201.
- Hearings.
 - Conduct of hearing on appeal before board, §3-2-215.
- Licenses.
 - Denial, suspension or revocation.
 - Appeal to board, §3-2-213.

ALCOHOLIC BEVERAGES —Cont'd

Board of alcoholic beverage control

—Cont'd

Licenses —Cont'd
 Denial, suspension or revocation
 —Cont'd
 Review by board on own motion,
 §3-2-214.

Majority vote required, §3-2-201.

Meetings, §3-2-201.

Members, §3-2-201.

Oaths.

Conducting or hearing appeals,
 §3-2-215.

Personnel, §3-2-207.

Personnel.

Oath of personnel, §3-2-207.

Qualifications, §3-2-207.

Powers and duties, §3-2-201.

Private clubs.

Rules and regulations, §3-9-225.

Responsible permittee programs
 generally, §§3-4-801 to 3-4-807.

Review of enforcement division,
 §3-2-201.

Rules and regulations.

Nudity on premises, §§3-5-222,
 3-9-101.

On-premises consumption.

Generally, §3-9-205.

Private clubs.

Establishment of rules and
 regulations, §3-9-225.

Seal of board, §3-3-204.

Solicitation.

Acceptance of bribe or solicitation
 prohibited, §3-2-208.

Subpoenas.

Conducting or hearing appeals,
 §3-2-215.

Witnesses.

Conducting or hearing appeals,
 §3-2-215.

Bonds, surety.

Free trade among small wineries,
 §3-5-1608.

Local option elections.

1935 act proceedings.

Multiple violations, §3-8-314.

Multiple offenses.

Bonds for good behavior, §3-3-103.

Brandy.

Citation of act, §3-6-101.

Manufacture, §3-6-102.

Permits, §3-6-104.

Permits.

Application for permit, §3-6-104.

Residence requirements, §3-6-104.

ALCOHOLIC BEVERAGES —Cont'd

Brandy —Cont'd

Permits —Cont'd

Fee, §3-6-104.

Collection of fees and taxes,
 §3-6-106.

Manufacture and sale authorized,
 §3-6-104.

Transferability of permit, §3-6-104.

Rules and regulations, §3-6-103.

Sale of brandy, §3-6-102.

Permit authorizes manufacture and
 sale, §3-6-104.

Tax on sales within state, §3-6-105.

Short title, §3-6-101.

Tax on sales within state, §3-6-105.

Collection of fees and taxes,
 §3-6-106.

Title of act, §3-6-101.

Bribery.

Board of alcoholic beverage control.

Solicitation or acceptance of bribe
 prohibited, §3-2-208.

Division of alcoholic beverage control.

Solicitation or acceptance of bribe
 prohibited, §3-2-208.

Enforcement division of alcoholic
 beverage control.

Solicitation or acceptance of bribe
 prohibited, §3-2-208.

Burden of proof.

Privilege license holders.

Violations, §3-3-218.

Registration of still or apparatus,
 §3-3-401.

Cabins and cottages.

Complimentary bottle of wine,
 §3-5-106.

Casualty.

Beer involved in fire, wreck or
 casualty.

Labeling of beer, §3-4-104.

Caterer's off-premise permits,

§§3-4-901 to 3-4-905.

Charitable auctions.

Wine, §§3-5-1501 to 3-5-1507.

Christmas.

Sale of intoxicating liquor on

Christmas prohibited, §3-3-211.

Churches.

Retail liquor business.

Operation of business within certain
 distance of church.

Prohibited, §3-4-206.

Wine.

Sacramental wine, §3-7-115.

Cider.

Sweet cider.

Exempted products, §3-1-103.

ALCOHOLIC BEVERAGES —Cont'd**Circuit courts.**

Enforcement of liquor laws.

Impeachment of circuit judge,
§3-2-302.

Responsibility of circuit judge,
§3-2-301.

Citation of act, §3-1-101.**Closing hours.**

Retail establishments.

Violating local closing hours,
§3-4-407.

Clubs.

Permits.

Suspension or refusal to renew,
§3-9-210.

Private clubs, §§3-9-221 to 3-9-229.

Complimentary bottle of wine.

Cabins and cottages, §3-5-106.

Conflict of laws.

Microbrewery-restaurants.

Effect on other laws, §3-5-1203.

Conflicts of interest.

Director of department of finance and
administration, §3-2-101.

Enforcement officers, §3-2-101.

Construction and interpretation.

Applicability of subchapter to future
agreements.

Transferee continues under
agreement, §3-5-1103.

Beer and light wines.

Wholesalers' protection from
arbitrary actions of suppliers.

Legislative intent and purpose,
§3-5-1101.

Cumulative nature of subchapter,
§3-5-1104.

Distribution.

Inapplicability of subchapter,
§3-2-411.

Purpose of subchapter, §3-2-401.

Scope of subchapter, §3-2-402.

Local option elections.

Initiated act proceedings, §§3-8-202,
3-8-203.

Microbrewery-restaurants.

Legislative findings and intent,
§3-5-1201.

Wine.

Disaster relief.

Construction of act with existing
laws, §3-5-804.

Contracts.

Manufacturer-seller relationships.

Prohibited acts and practices.

Exclusivity agreements, §3-3-213.

ALCOHOLIC BEVERAGES —Cont'd**Contracts —Cont'd**

Taxation.

Payment by wholesalers and
importers.

Right to contract, §3-7-306.

Wholesale dealers and distributors.

Terms and conditions binding on
successor, §3-2-410.

Wholesalers' protection from arbitrary
actions of suppliers.

Applicability of subchapter to future
agreements, §3-5-1103.

Conditions for modifications of
agreements, §3-5-1111.

Corporations.

Permits.

Proceedings on dissolution of
permittee firms, §3-4-103.

Counties.

Licenses and taxes, §3-4-202.

On-premises consumption, §3-9-202.

Large attendance facility mixed
drink permits, §3-9-227.

Police power of local governments.

Rules and regulations, §3-9-205.

Supplemental tax or fee levied by
city, incorporated town or
county, §3-9-214.

Permits.

Beer and light wine.

Required for sale, distribution,
and manufacture, §3-5-211.

Retailers' permits, §3-5-212.

Police power of local governments.

On-premises consumption of alcohol.

Rules and regulations, §3-9-205.

Taxation, §3-4-202.

"Person" defined, §3-7-102.

Damages.

Wholesalers' protection from arbitrary
actions of suppliers.

Civil action for violations, §3-5-1106.

Deceit.

Beer retailer licenses.

Applications, §3-5-303.

Declaratory judgments.

Wholesalers' protection from arbitrary
actions of suppliers.

Civil remedy for violations,
§3-5-1106.

Definitions.

Annexation of dry township into wet
city or town.

Local option election, §3-8-501.

Beer, §3-5-202.

Block, §3-1-102.

Dispensary, §3-1-102.

ALCOHOLIC BEVERAGES —Cont'd**Definitions —Cont'd**

- General provisions, §3-1-102.
- Illicit still, §3-3-401.
- Light wine, §3-5-202.
- Local option elections.
 - Initiated act proceedings, §3-8-201.
- Malt, §3-1-102.
- Manufacturer, §3-1-102.
- Microbrewery-restaurants, §3-5-1202.
- On-premises consumption, §3-9-202.
 - Sunday sales, §3-9-202.
 - Wine, §3-9-301.
- Permittee.
 - Responsible permittee programs, §3-4-802.
- Person, §3-1-102.
 - Dry territories, §3-3-301.
- Spirituuous, §3-1-102.
- Vinous, §3-1-102.
- Wholesalers' protection from arbitrary actions of suppliers, §3-5-1102.
- Wine.
 - On-premises consumption, §3-9-301.

Denatured alcohol.

- Exempted products, §3-1-103.
- Prohibited acts and practices, §3-3-214.

Disaster relief.

- Wine, §§3-5-801 to 3-5-807.

Dispensary.

- Defined, §3-1-102.

Dispensing.

- Privilege of dispensing.
 - Fee for privilege, §3-4-604.

Distillers.

- Distribution.
 - General provisions, §§3-2-403 to 3-2-412.
 - Inapplicability of subchapter, §3-2-411.
 - Purpose of subchapter, §3-2-401.
 - Scope of subchapter, §3-2-402.
- Permit, §3-4-602.
- Privilege of distilling.
 - Fee for privilege, §3-4-602.
- Records of distillers of spirituous liquors.
 - Tax on alcoholic liquors, §3-7-113.

Distribution.

- Inapplicability of subchapter, §3-2-411.
- Purpose of subchapter, §3-2-401.
- Scope of subchapter, §3-2-402.

Division of alcoholic beverage control.

- Board of alcoholic beverage control.
 - Management of division by board, §3-2-201.

ALCOHOLIC BEVERAGES —Cont'd**Division of alcoholic beverage control —Cont'd**

- Bribery.
 - Solicitation or acceptance of bribe prohibited, §3-2-208.
- Director.
 - Assistants.
 - Employment of two assistants, §3-2-202.
 - Beer.
 - Employment of additional administrative personnel.
 - Enforcement of subchapter, §3-5-225.
 - Bribery.
 - Solicitation or acceptance of bribe prohibited, §3-2-208.
 - Dry territories.
 - Prohibited acts and practices.
 - Rules and regulations, §3-3-303.
 - Employment of two assistants and other personnel, §3-2-202.
 - Functions, §3-2-205.
 - Licenses.
 - Denial.
 - Appeal or review, §§3-2-212 to 3-2-214.
 - Procedure, §3-2-212.
 - Registered mail.
 - Order suspending, revoking or refusing license sent by registered mail, §3-2-212.
 - Suspension or revocation of licenses, §3-2-212.
 - Appeal or review, §§3-2-212 to 3-2-214.
 - Order suspending, revoking or refusing license sent by registered mail, §3-2-212.
 - Personnel.
 - Employment of two assistants and other personnel, §3-2-202.
 - Powers and duties, §3-2-205.
 - Qualifications, §3-2-202.
 - Records and reports of licensees.
 - Authority to regulate, §3-2-211.
 - Removal.
 - Assistants and other personnel, §3-2-202.
 - Rules and regulations.
 - Adoption and promulgation of rules and regulations, §3-2-206.
 - Dry territories.
 - Prohibited acts and practices, §3-3-303.

ALCOHOLIC BEVERAGES —Cont'd**Division of alcoholic beverage control —Cont'd****Director —Cont'd**

Seal of director, §3-2-204.

Authentication of records,
§3-2-204.

Transcript fees, §3-2-217.

Wine.

Light wine.

Employment of additional
administrative personnel,
§3-5-225.

Duties, §3-2-205.

Enforcement of liquor laws, §3-2-209.

Functions, §3-2-205.

Permit authority in absence of
election, §3-8-210.**Personnel.**

Oath of personnel, §3-2-207.

Qualifications, §3-2-207.

Powers and duties, §3-2-205.

Tax collection excepted, §3-2-205.

Records.

Authentication of records, §3-2-204.

Solicitation.Acceptance of bribe or solicitation
prohibited, §3-2-208.**Tax collection.**Exception to rights, powers,
authority and duty of division,
§3-2-205.**Wine.****Taxation.**Enforcement of provisions,
§3-7-505.

Wine tasting offense.

Approval, §3-5-104.

Dry territories.Annexation of dry township into wet
city or town.Local option election, §§3-8-501,
3-8-502.**Fines.**Procuring liquor for another,
§3-3-309.Sale, barter, loan, etc., in dry
territory, §3-8-312.**Misdemeanors.**

Confiscated beverages.

Failure to surrender, §3-3-315.

Where no penalty specified,
§3-3-302.**Penalties.**Sale, barter, loan, etc., in dry
territory, §3-8-312.**Prohibited acts and practices.****Definitions.**

Person, §3-3-301.

ALCOHOLIC BEVERAGES —Cont'd**Dry territories —Cont'd****Prohibited acts and practices —Cont'd**Procuring liquor for another,
§3-3-309.

Rules and regulations.

Authority to promulgate, §3-3-303.

Seizure of beverages.

Authorized, §3-3-311.

Determination of interest in seized
beverages, §3-3-313.

Procedure, §3-3-312.

Sale of confiscated beverages,
§3-3-314.

Surrender of confiscated beverages.

Failure to surrender, §3-3-315.

Solicitation or taking orders, §3-3-310.

Violations.Procuring liquor for another,
§3-3-309.

Wine tasting events, §3-5-104.

Duty of care.

Privilege license holders, §3-3-218.

Enforcement, §3-3-218.

Education.

Retail liquor business.

Operation of business within certain
distance of schoolhouse
prohibited, §3-4-206.**Elections.**Local option elections, §§3-8-101 to
3-8-401.

On-premises consumption.

Local option elections.

Subsequent to referendum
elections, §3-9-208.

Referendum elections.

Conduct, §3-9-206.

Effect, §3-9-207.

Subsequent local option elections.
Effect, §3-9-208.

Sunday beer and wine permits.

Hotels and restaurants, §3-9-506.

Emergencies.**Wine.**

Disaster relief, §§3-5-801 to 3-5-807.

Enforcement division of alcoholic beverage control.**Bribery.**Solicitation or acceptance of bribe
prohibited, §3-2-208.

Director, §3-2-203.

Duties, §3-2-205.

Functions, §3-2-205.

Personnel.Employment and removal,
§3-2-202.

Powers, §3-2-205.

ALCOHOLIC BEVERAGES —Cont'd
Enforcement division of alcoholic
beverage control —Cont'd

Duties, §3-2-205.
 Enforcement of liquor laws, §3-2-209.
 Personnel.
 Oath of personnel, §3-2-207.
 Qualifications, §3-2-207.
 Powers, §3-2-205.
 Solicitation.
 Acceptance of bribe or solicitation
 prohibited, §3-2-208.
 Staff, §3-2-203.
 Tax collection.
 Exception to rights, powers,
 authority and duties of division,
 §3-2-205.

Enforcement of liquor laws.

Agents.
 Authority of enforcement agents,
 §3-2-210.
 Circuit judges.
 Impeachment of circuit judge,
 §3-2-302.
 Responsibility of circuit judge,
 §3-2-301.
 Destruction of liquor.
 Search warrants issued, §3-2-304.
 Division of alcoholic beverage control,
 §3-2-209.
 Peace officers, §3-2-209.
 Authority, §3-2-210.
 Prosecuting attorneys.
 Special prosecutor, §3-2-301.
 Powers of temporary appointees,
 §3-2-301.
 Searches and seizures.
 Authority of enforcement agents,
 §3-2-210.
 Search warrants.
 Issuance of search warrants,
 §3-2-304.
 Sheriffs.
 Temporary officer to act in place of
 sheriff, §3-2-301.
 Powers of temporary appointees,
 §3-2-301.
 Special prosecutor, §3-2-301.
 Powers of temporary appointees,
 §3-2-301.
 State police.
 Powers and duties, §3-2-303.

Equipment.

Illicit manufacture and equipment,
 §§3-3-401 to 3-3-405.

ALCOHOLIC BEVERAGES —Cont'd
Evidence.

Denatured alcohol.
 Sale for beverage purposes
 prohibited.
 Prima facie evidence in sale of
 alcohol, §3-3-214.
 Federal license.
 Sale of liquor or beer on federal
 license without state license.
 Prima facie evidence of unlawful
 possession, §3-3-215.
 Illicit manufacture and equipment.
 Burden of proof.
 Registration of still or apparatus,
 §3-3-401.
 Reputation of defendant, §3-3-405.
 Privilege license holders.
 Burden of proof of violations,
 §3-3-218.

Exempted products, §3-1-103.

Fees.

Beer festival permits, §3-5-105.
 Brewing.
 Privilege of brewing, §3-4-602.
 Caterer's off-premises permits,
 §3-4-902.
 Dispensing.
 Privilege of dispensing, §3-4-604.
 Disposition.
 When fees due, §3-4-501.
 Distilling.
 Privilege of distilling, §3-4-602.
 Hotels or restaurants.
 Permits, §3-9-212.
 Sunday sales, §3-9-407.
 Sunday sales.
 Permits, §3-9-407.
 Licenses, §3-4-219.
 Microbrewery-restaurants,
 §3-5-1205.
 Microbrewery-restaurants.
 License fees, §3-5-1205.
 Nonresident beer sellers' permits,
 §3-5-1306.
 On-premises consumption.
 Supplemental fees.
 Levied by political subdivisions,
 §3-9-214.
 Permits.
 Applications, §3-4-208.
 Denial of applications.
 Refunds, §3-4-212.
 Beer.
 Dancing privileges.
 Inspection fee, §3-5-209.

ALCOHOLIC BEVERAGES —Cont'd**Fees —Cont'd**

Permits —Cont'd

Beer —Cont'd

Retailers' permits.

Counties and municipalities,
§3-5-212.

State permits.

Privilege tax, §§3-5-205, 3-5-208.

Transfer of permit.

Inspection fee, §3-5-209.

Copies, §3-4-220.

Hotels or restaurants, §3-9-212.

Sunday sales, §3-9-407.

Light wine.

Dancing privileges, §3-5-209.

Retailers' permits.

Counties and municipalities,
§3-5-212.

State permits.

Privilege tax, §§3-5-205, 3-5-208.

Transfer of permit, §3-5-209.

Private clubs, §3-9-222.

Renewal fees, §3-9-223.

Renewal generally, §3-4-208.

Sunday sales, §3-9-407.

Suspension, cancellation or
revocation, §3-9-409.

Appeals, §3-9-409.

Private clubs.

Permits, §3-9-222.

Renewal fees, §3-9-223.

Rectifying.

Privilege of rectifying, §3-4-603.

Responsible permittee programs,
§3-4-807.

Sunday sales.

Beer and wine permit, §3-9-503.

Board.

Rules and regulations.

Authority to adopt and enforce,
§3-9-408.

Permits, §3-9-407.

Suspension, cancellation or
revocation, §3-9-409.

Appeals, §3-9-409.

Rules and regulations.

Authority of board to adopt and
enforce, §3-9-408.

When fees due, §3-4-501.

Disposition of fees, §3-4-501.

Wholesale support center permits,
§3-5-1306.**Fiduciaries.**Continuation of permitted business,
§3-4-103.

Sale by fiduciaries, §3-4-104.

ALCOHOLIC BEVERAGES —Cont'd**Finance and administration
department.**

Director.

Conflicts of interest, §3-2-101.

Taxation.

Beer.

Employment of additional
personnel to enforce
subchapter, §3-5-225.

Rules and regulations, §3-7-404.

Wine.

Enforcement of provisions,
§3-7-505.

Rules and regulations, §3-7-501.

Wine.

Incentive grants.

Establishment of rules and
regulations, §3-5-903.

Light wine.

Employment of additional
personnel to enforce
subchapter, §3-5-225.

Taxation, §§3-7-501, 3-7-505.

Fines.

Beer.

Miscellaneous prohibited practices,
§3-5-221.

Furnishing to minors, §3-3-201.

Local option elections.

1935 act proceedings.

Dry territories.

Sale, barter, loan, etc., in dry
territory, §3-8-312.

Dry vote.

Unlawful sales after, §3-8-310.

Initiated act proceedings.

Sales, or furnishing place for sale,
in dry territory, §3-8-209.

Mitigation.

Responsible permittee program.

Participation, §3-4-806.

Permit violations.

Authorization to impose fines,
§3-4-401.

Classes of fines, §3-4-402.

Disposition of fines, §3-4-502.

Repeat violations, §3-4-402.

Prohibited acts and practices
generally, §3-3-102.

Sales to minors, §3-3-201.

Wine.

Light wine.

Miscellaneous prohibited
practices, §3-5-221.Miscellaneous prohibited practices,
§3-5-221.

ALCOHOLIC BEVERAGES —Cont'd**Fire prevention.**

Beer involved in fire, wreck or casualty.

Labeling of beer, §3-4-104.

Flavoring extracts and syrups.

Exempted products, §3-1-103.

Fraud.

Beer.

Retailers.

Licenses.

Applications, §3-5-303.

Free trade among small wineries,

§§3-5-1601 to 3-5-1609.

Fruit.

Wine.

Importing natural fruit and herb flavors for production of native wine, §3-5-604.

Subject to tax, §3-5-605.

Funds.

Beer.

Disposition of funds, §3-5-224.

Special retail tax.

Disposition of funds, §3-7-205.

Wine.

Incentive grants.

Agricultural marketing grants fund.

Establishment and use,
§3-5-908.

Light wine.

Disposition of funds, §3-5-224.

Subsidies.

Wine grape, berry, fruit and vegetable subsidy fund,
§3-5-1007.

Gambling devices, gaming devices or slot machines kept on permitted premises, §3-9-236.**Golf tournaments.**

Private clubs, §3-9-221.

Grand jury.

Local option elections.

1935 act proceedings.

Charge to grand jury.

Act to be given, §3-8-316.

Grants.

Wine.

Incentive grants, §§3-5-901 to 3-5-908.

Hearings.

Board of alcoholic beverage control.

Conduct of hearing on appeal before board, §3-2-215.

ALCOHOLIC BEVERAGES —Cont'd**Hearings —Cont'd**

Permits.

Applications, §3-4-208.

Wholesale dealers and distributors.

Request to change wholesalers,
§§3-2-405, 3-2-406.

Home-brewed beer.

Defined, §3-5-202.

Exemption from privilege tax,
§3-5-205.

Manufacture without state permit,
§3-5-210.

Scope of state permit, §3-5-207.

Illicit manufacture and equipment,

§3-3-402.

Burden of proof.

Registration of still or apparatus,
§3-3-401.

Definition.

Illicit still, §3-3-401.

Destruction of still, §3-3-404.

Evidence.

Burden of proof.

Registration of still or apparatus,
§3-3-401.

Reputation of defendant, §3-3-405.

Felonies, §3-3-402.

Generally, §3-3-402.

Illicit still.

Defined, §3-3-401.

Possession, §3-3-402.

Sale of still, §3-3-404.

Still.

Destruction, §3-3-404.

Illicit still.

Defined, §3-3-401.

Sale, §3-3-404.

Transportation, §3-3-402.

Seizure and forfeiture of vehicles,
§3-3-403.

Illicit still.

Defined, §3-3-401.

Importers.

Distribution.

General provisions, §§3-2-403 to 3-2-412.

Inapplicability of subchapter,
§3-2-411.

Purpose of subchapter, §3-2-401.

Scope of subchapter, §3-2-402.

Indictments.

Local option elections.

1935 act proceedings, §3-8-313.

Initiative and referendum.

Sunday beer and wine permits.

Hotels and restaurants, §3-9-506.

ALCOHOLIC BEVERAGES —Cont'd**Injunctions.**

Wholesalers' protection from arbitrary actions of suppliers.

Injunctive relief for violations,
§3-5-1106.

Inspections.

On-premises consumption, §3-9-232.

Records and reports of licensees,
§3-2-211.

Sunday sales.

Inspection of books and records.

Consent to inspection prerequisite to obtaining permit, §3-9-406.

Insurance.

Sale by insurers, §3-4-104.

Interstate commerce.

Wine.

Bottling of local wines.

Sizes convenient for interstate or intrastate sale, §3-5-603.

Regulations established by director, §3-5-602.

Invoices.

Failure to pay invoices.

List of permit holders, §3-4-406.

Labels.

Beer.

Label submission to division,
§3-2-409.

Sale in original, labeled containers,
§3-5-220.

Distribution.

Acquisition of right to sell, ship or distribute a label, §3-2-408.

Beer, malt products or light wine.

Label submission requirements,
§3-2-409.

Spirituuous and vinous beverages.

Registration of brands and labels,
§3-2-403.

Wine.

Light wine, §3-2-409.

Sacramental wine, §3-7-115.

Licenses.

Appeal and review.

Denial, suspension or revocation,
§3-2-216.

Board of alcoholic beverage control.

Review by board, §§3-2-213,
3-2-214.

Applications.

Beer.

Retail dealers, §§3-5-302 to
3-5-306.

ALCOHOLIC BEVERAGES —Cont'd**Licenses —Cont'd**

Beer.

Federal license.

Sale of beer without state license,
§3-3-215.

Retail dealers, §§3-5-301 to 3-5-307.

City licenses, §3-4-202.

County licenses, §3-4-202.

Denial.

Appeal to board, §3-2-213.

Procedure, §3-2-212.

Review by board on own motion,
§3-2-214.

Duty of care of holders, §3-3-218.

Enforcement, §3-3-218.

Federal license.

Sale of liquor or beer on federal license without state license,
§3-3-215.

Prima facie evidence of unlawful possession, §3-3-215.

Fees, §3-4-219.

Issuance of license.

Notice requirements, §3-4-210.

Liens.

License fees, §3-4-219.

Microbrewery-restaurants.

Application, §3-5-1206.

Fees, §3-5-1205.

Form and content of application,
§3-5-1206.

Operation without license prohibited, §3-5-1207.

Restrictions, §3-5-1204.

Scope, §3-5-1204.

Municipal corporations, §3-4-202.

Prohibited acts and practices.

Sale or possession without license,
§3-3-205.

Records and reports of licensees,
§3-2-211.

Revocation.

Appeal to board, §3-2-213.

Beer retailers.

Misstatement or concealment of facts in license applications,
§3-5-303.

Procedure, §3-2-212.

Review by board on own motion,
§3-2-214.

Suspension.

Appeal to board, §3-2-213.

Procedure, §3-2-212.

Review by board on own motion,
§3-2-214.

Tax receipts.

Sale or delivery to retailer without valid receipt, §3-3-206.

ALCOHOLIC BEVERAGES —Cont'd**Licenses —Cont'd**

- Wholesale dealers and distributors.
- Distribution of spirituous and vinous beverages.
- Designation of licensed wholesaler, §3-2-403.
- Wine and beer on-premises licenses, §§3-9-601 to 3-9-606.

Liens.

- License fees, §3-4-219.
- Permit fees, §3-4-219.
- Taxation.
- Special retail tax.
- Execution of lien, §3-7-203.
- Procedure for obtaining lien, §3-7-202.

Light wine.

- General provisions, §§3-5-201 to 3-5-226.
- Wholesalers' protection from arbitrary actions of suppliers, §§3-5-1101 to 3-5-1111.

Local option elections.

- Beer, §3-8-401.
- Beer involved in fire, wreck or casualty.
- Labeling of beer, §3-4-104.
- Control division authority to issue sale permits, §3-8-210.
- Date.
- Initiated act proceedings.
- Subsequent elections, §3-8-208.
- When elections held, §3-8-101.
- Definitions.
- Initiated act proceedings, §3-8-201.
- Dry territories.
- 1935 act proceedings.
- Dry vote.
- Unlawful sales after, §3-8-310.
- Sale, barter, loan, etc., in dry territory, §3-8-312.
- Annexation of dry township into wet city or town, §§3-8-501, 3-8-502.
- Initiated act proceedings.
- Sales, or furnishing place for sale, in dry territory.
- Prohibited, §3-8-209.
- Dry vote.
- Manufacturers.
- Effect, §3-8-103.
- 1935 act proceedings.
- Effect of vote against sale, §3-8-310.
- Retail dealers.
- Effect, §3-8-102.
- Wholesalers.
- Effect, §3-8-103.

ALCOHOLIC BEVERAGES —Cont'd**Local option elections —Cont'd**

- Holding of elections.
- When held, §3-8-101.
- Initiated act proceedings.
- Appeals.
- Calling of election, §3-8-205.
- Applicability.
- Manufacturers who sell their product exclusively to wholesalers, §3-8-203.
- Ballots.
- Counting and recounting, §3-8-206.
- Form, §3-8-206.
- Calling of election, §3-8-205.
- Conduct of election, §3-8-206.
- Construction and interpretation, §3-8-202.
- Manufacturers who sell their product exclusively to wholesalers.
- Applicability of sections, §3-8-203.
- County officials.
- Mandamus, §3-8-207.
- Definitions, §3-8-201.
- Determination of sufficiency, §3-8-205.
- Dry territories.
- Sales or furnishing place for sale in dry territory.
- Prohibited, §3-8-209.
- Felonies, §3-8-209.
- Intoxicated liquor.
- Defined, §3-8-201.
- Mandamus.
- County officials, §3-8-207.
- Manufacturers who sell their product exclusively to wholesalers.
- Applicability of sections, §3-8-203.
- Petitions.
- Misdemeanors, §3-8-204.
- Procedure.
- Generally, §3-8-204.
- Sufficiency.
- Determination, §3-8-205.
- Results of election, §3-8-208.
- Effects, §3-8-208.
- Time for elections.
- Subsequent elections, §3-8-208.
- Light wine, §3-8-401.
- 1935 act proceedings.
- Appeals.
- Contests of elections, §3-8-309.
- Applicability.
- Election laws generally, §3-8-308.

ALCOHOLIC BEVERAGES —Cont'd**Local option elections —Cont'd**

1935 act proceedings —Cont'd

Applicability —Cont'd

Exceptions from act, §3-8-301.

Bonds, surety.

Multiple violations, §3-8-314.

Certificate of election results,
§3-8-306.

Charge to grand jury.

Act to be given in, §3-8-316.

Cities.

Elections for entire city, §3-8-305.

C.O.D. shipments, §3-8-315.

Conduct of election, §3-8-304.

Contests of election, §3-8-309.

Costs of election.

Deposit, §3-8-303.

Counties.

Elections for entire county,
§3-8-305.

Criminal indictment, §3-8-313.

Deposit of election costs, §3-8-303.

Districts.

Elections for entire district,
§3-8-305.

Dry territories.

Sale, barter, loan, etc., in dry
territory, §3-8-312.

Dry vote.

Effect of vote against sale,
§3-8-310.

Effect of vote, §3-8-307.

Eligibility to vote.

Violations of persons voting who
are ineligible to vote,
§3-8-308.

Exceptions from act, §3-8-301.

Felonies, §3-8-312.

Grand juries.

Act to be given in charge to grand
jury, §3-8-316.

Indictments, §3-8-313.

Notice of election, §3-8-304.

Order for election, §3-8-302.

Deposit of election costs
prerequisite to order,
§3-8-303.

Petition for election, §3-8-302.

Results of election.

Certificate, §3-8-306.

Shipments.

C.O.D. shipments, §3-8-315.

Wet vote.

Effect of vote for sale, §3-8-310.

ALCOHOLIC BEVERAGES —Cont'd**Local option elections —Cont'd**

1935 act proceedings —Cont'd

Wholesale of intoxicating liquor in
prohibited territory, §3-8-317.

On-premises consumption.

Subsequent to referendum elections,
§3-9-208.

Penalties.

Dry territories, §3-8-312.

Dry vote.

Unlawful sales after, §3-8-310.

Sales or furnishing place for sale in
dry territory, §3-8-209.

Retail dealers.

Effect of dry vote, §3-8-102.

Sale unlawful when election adverse,
§3-8-307.

Time.

Initiated act proceedings.

Subsequent elections, §3-8-208.

When elections held, §3-8-101.

Wholesale dealers and distributors.

Effect of dry vote, §3-8-103.

Mail.Director of alcoholic beverage control
division.Order suspending, revoking or
refusing license sent by
registered mail, §3-2-212.**Malt.**

Defined, §3-1-102.

Exempted products, §3-1-103.

Malt products.

Distribution.

Label submission to division,
§3-2-409.Native breweries, §§3-5-1401 to
3-5-1414.**Mandamus.**

Local option elections.

Initiated act proceedings.

County officials, §3-8-207.

Manufacture.

Brandy, §§3-6-102, 3-6-104.

Illicit manufacture and equipment,
§§3-3-401 to 3-3-405.**Manufacturers.**

Defined, §3-1-102.

Distribution.

General provisions, §§3-2-403 to
3-2-412.Inapplicability of subchapter,
§3-2-411.

Purpose of subchapter, §3-2-401.

Scope of subchapter, §3-2-402.

ALCOHOLIC BEVERAGES —Cont'd

Manufacturers —Cont'd

- Local option elections.
- Effect of dry vote, §3-8-103.
- Initiated act proceedings.
- Applicability of act to manufacturers who sell their product exclusively to wholesalers, §3-8-203.
- Permits, §3-4-602.

Manufacturer-seller relationships.

- Prohibited acts and practices.
- Exclusivity agreements, §3-3-213.
- Generally, §3-3-212.

Medicinal preparations.

- Exempted products, §3-1-103.

Microbrewery-restaurants,

- §§3-5-1201 to 3-5-1208.
- Conflict of laws.
- Effect on other laws, §3-5-1203.
- Declaration of public policy.
- Legislative findings and intent, §3-5-1201.

- Definitions, §3-5-1202.

- Legislative intent, §3-5-1201.

Licenses.

- Application, §3-5-1206.
- Fees, §3-5-1205.
- Form and content of application, §3-5-1206.
- Issuance, §3-5-1204.
- Operation without license prohibited, §3-5-1207.
- Restrictions, §3-5-1204.
- Scope, §3-5-1204.

Misdemeanors.

- Operation without license, §3-5-1207.

- Native breweries, §§3-5-1401 to 3-5-1414.

- Rulemaking authority, §3-5-1208.

Taxation.

- Licensees, §3-5-1205.

Military affairs.

- Post-exchange package permits, §§3-4-701 to 3-4-706.
- Sales to military.
- Taxation.
- Payment by wholesalers and importers.
- Rules and regulations, §3-7-307.

Minors.

- Beer and light wine, §3-5-221.
- Licensing of retailers, §3-5-307.
- On-premises consumption, §3-9-236.
- Prohibited acts and practices.
- Handling of alcoholic beverages by minors not allowed, §3-3-204.
- Penalties for violation, §3-3-204.

ALCOHOLIC BEVERAGES —Cont'd

Minors —Cont'd

- Prohibited acts and practices —Cont'd
- Knowingly furnishing to minor, §3-3-202.
- Posting of warning notices, §3-3-202.
- Purchase or possession by minor, §3-3-203.
- Sales, §§3-3-201, 3-3-202.
- Unknowingly furnishing to minor, §3-3-201.

Municipal corporations.

Beer.

- Permits generally, §3-5-211.

Retailers.

- Permits, §3-5-212.
- Regulation, §3-5-213.

Licenses, §3-4-202.

On-premises consumption.

- Supplemental tax or fee levied by city, incorporated town or county, §3-9-214.

Permits.

Beer and light wine.

- Required for sale, distribution and manufacture, §3-5-211.

- Retailers' permits, §3-5-212.

Police power of local governments.

- On-premises consumption of alcohol.

- Rules and regulations, §3-9-205.

Native brandy law.

- General provisions, §§3-6-101 to 3-6-106.

Native breweries, §§3-5-1401 to 3-5-1414.

Nonresident beer sellers, §§3-5-1301 to 3-5-1310.

- Administrative sanctions for violations, §3-5-1310.

Advertising, §3-5-1305.

Application for permit, §3-5-1306.

Authorized transactions, §3-5-1304.

Citation of act.

- Short title, §3-5-1301.

Confidentiality of investigations, §3-5-1309.

Definitions, §3-5-1302.

Examination of permittees, §3-5-1309.

Fees.

- Application for permit, §3-5-1306.

- Permits, §3-5-1306.

First source requirement.

- Primary American source of supply, §3-5-1308.

Importation by wholesaler from nonresident without permit, §3-5-1307.

Investigation of permittees, §3-5-1309.

ALCOHOLIC BEVERAGES —Cont'd**Nonresident beer sellers —Cont'd**

- Permit application, §3-5-1306.
- Permit requirement, §3-5-1303.
- Primary American source of supply.
 - General requirement, §3-5-1308.
- Prohibited actions, §3-5-1305.
- Reports.
 - Failure to file, §3-5-1305.
- Sanctions for violations, §3-5-1310.
- Shipment of beer or malt liquor into state for sale.
 - Authorized transaction, §3-5-1304.
- Short title, §3-5-1301.
- Solicitation of orders for beer or malt liquor.
 - Authorized transaction, §3-5-1304.
- Violations.
 - Sanctions, §3-5-1310.
 - Violations enumerated, §3-5-1305.
 - When permit required, §3-5-1303.
 - Wholesaler importation by nonresident without permit, §3-5-1307.

Notice.

- Beer.
 - Distribution areas for beer, §3-5-103.
- Retailers.
 - Licenses.
 - Applications, §3-5-304.
- Local option elections.
 - 1935 act proceedings, §3-8-304.
- Permits.
 - Applications.
 - Requirements as to notice, §3-4-210.
 - Revocation of permit, §3-4-303.
- Wholesale dealers and distributors.
 - Request to change wholesalers.
 - Hearing notice, §§3-2-405, 3-2-406.

Oaths.

- Beer.
 - Permits.
 - Applicant, §3-5-214.
- Board of alcoholic beverage control.
 - Conducting or hearing appeals, §3-2-215.
 - Personnel, §3-2-207.
- Division of alcoholic beverage control.
 - Personnel, §3-2-207.
- Enforcement division of alcoholic beverage control.
 - Personnel, §3-2-207.
- Wine.
 - Light wine.
 - Permits.
 - Applicant, §3-5-214.

ALCOHOLIC BEVERAGES —Cont'd**Obscenity.**

- Beer retailers.
 - Nudity on premises.
 - Prohibited, §3-5-222.
- Light wine retailers.
 - Nudity on premises.
 - Prohibited, §3-5-222.
- Nudity on premises.
 - Penalty, §§3-5-222, 3-9-101.
 - Prohibited, §§3-5-222, 3-9-101.
 - Regulations, §§3-5-222, 3-9-101.

Off-premise caterer's permits, §§3-4-901 to 3-4-905.

- Annual fee, §3-4-902.
- Collection of gross receipts tax, §3-4-904.
- Definitions, §3-4-901.
- Issuance, §§3-4-902, 3-4-903.
- Liability insurance, §3-4-903.
- Posting requirements, §3-4-902.
- Qualifications, §3-4-903.
- Rulemaking authority, §3-4-905.

On-premises brewery sales, §3-5-226.**On-premises consumption.**

- Bed and breakfast private clubs.
 - Complimentary bottle of wine, §3-5-106.
- Defined, §3-9-202.
- Exemption from alcoholic beverage law, §3-9-221.
- Permit renewal fees, §3-9-223.
- Procedure for obtaining permit, §3-9-222.

Beer.

- Nudity.
 - Penalty, §3-5-222.
 - Prohibited, §3-5-222.
 - Regulations, §3-5-222.
- Sunday sales.
 - Permits, §3-9-411.
- Brewery sales, §3-5-226.
- Closing hours, §3-9-233.
- Clubs.
 - Private clubs, §§3-9-221 to 3-9-229.
- Complimentary bottle of wine, §3-5-106.
- Declaration of legislature, §3-9-201.
- Definitions, §3-9-202.
- Sunday sales, §3-9-202.
- Disposition of fees and taxes collected, §3-9-237.
- Effect on other laws, §3-9-211.
- Elections.
 - Local option elections.
 - Subsequent to referendum elections, §3-9-208.

ALCOHOLIC BEVERAGES —Cont'd**On-premises consumption —Cont'd****Elections —Cont'd**

Referendum elections, §3-9-206.

Conduct, §3-9-206.

Effect, §3-9-207.

Subsequent local option elections.

Effect, §3-9-208.

Fees.**Permits.**

Sunday sales.

Disposition of fees, §3-9-412.

Supplemental fees.Levied by political subdivisions,
§3-9-214.**Hotels or restaurants.**Inspection of premises and records,
§3-9-232.Permit for hotel or restaurant,
§3-9-210.

Fees, §3-9-212.

Suspension, cancellation or
revocation.Violations of subchapter
regulating Sunday sales,
§3-9-403.**Sunday sales.**

Authorization of, §3-9-215.

Wine.Restaurant or cafe, §§3-9-301 to
3-9-307.**Hours of operation.**

Closing hours, §3-9-233.

Inspections.**Sunday sales.**

Books and records of permittee.

Consent to inspection
prerequisite to obtaining
permit, §3-9-406.Large attendance facility mixed drink
permits, §3-9-227.Legislative determinations and intent,
§3-9-201.**Local option elections.**Subsequent to referendum elections,
§3-9-208.**Misdemeanors, §3-9-236.**

Sunday sales, §3-9-403.

Nudity.

Beer consumption, §3-5-222.

Penalty, §§3-5-222, 3-9-101.

Wine.

Light wine consumption, §3-5-222.

Penalties.Revocation of permit upon failure to
pay taxes.

Late payment penalty, §3-9-234.

Sunday sales, §3-9-403.

ALCOHOLIC BEVERAGES —Cont'd**On-premises consumption —Cont'd****Penalties —Cont'd**

Violation of provisions, §3-9-204.

Permits.

Cancellation of permits, §3-9-235.

Sunday sales.

Violations of subchapter,
§3-9-403.Disposition of fees and taxes
collected, §3-9-237.

Effect on other laws, §3-9-211.

Hotel or restaurant permit,
§3-9-210.

Fees, §3-9-212.

Sunday sales.Suspension, cancellation or
revocation of permit for
violations of subchapter,
§3-9-403.Large attendance facility mixed
drink permits, §3-9-227.

Revocation of permits, §3-9-235.

Failure to renew or pay taxes,
§3-9-234.

Late payment penalty, §3-9-234.

Sunday sales.Violations of subchapter,
§3-9-403.Sale of alcoholic beverages without
permit, §3-9-209.**Sunday sales.**

Applications, §3-9-405.

Beer, §3-9-411.

Fees, §3-9-407.

Disposition, §3-9-412.

Inspection of books and records.

Consent to inspection
prerequisite to obtaining
permit, §3-9-406.Renewal after revocation for
failure to remit fee, §3-9-410.

Requirements, §3-9-404.

Suspension, cancellation or
revocation.

Grounds, §3-9-410.

Temporary permits, §3-9-404.

Fees, §3-9-404.

Wine, §3-9-411.

Suspension of permits, §3-9-235.

Sunday sales.Violations of subchapter,
§3-9-403.Police power of state and local
governments.

Rules and regulations, §3-9-205.

Policy of state, §3-9-201.

ALCOHOLIC BEVERAGES —Cont'd**On-premises consumption —Cont'd**

Private clubs.

General provisions, §§3-9-221 to 3-9-229.

Purpose of chapter, §3-9-201.

Restaurants.

Wine.

Restaurant or cafe, §§3-9-301 to 3-9-307.

Rules and regulations.

Adoption and enforcement, §3-9-205.

Scope of provisions of act, §3-9-203.

Sunday sales.

Authorization of Sunday sales, §3-9-215.

Beer, §3-9-411.

Board.

Defined, §3-9-402.

Definitions, §3-9-402.

Director.

Defined, §3-9-402.

Excursion boat.

Defined, §3-9-402.

Fees.

Disposition of fees, §3-9-412.

Hotels or restaurants.

Authorization of Sunday sales, §3-9-215.

Exemptions, §3-9-413.

Hotel defined, §3-9-402.

Inspection of books and records.

Consent to inspection prerequisite to obtaining permit, §3-9-406.

Large attendance facilities, §3-9-216.

Legislative declaration.

Purpose of subchapter, §3-9-401.

Misdemeanors, §3-9-403.

On-premises consumption.

Defined, §3-9-402.

Permits.

Applications, §3-9-405.

Beer, §3-9-411.

Fees, §3-9-407.

Disposition, §3-9-412.

Inspection of books and records.

Consent to inspection prerequisite to obtaining permit, §3-9-406.

Renewal after revocation for failure to remit fee, §3-9-410.

Requirements, §3-9-404.

Suspension, cancellation or revocation.

Grounds, §3-9-410.

Sunday sales without valid permit, §3-9-403.

Temporary permits, §3-9-404.

ALCOHOLIC BEVERAGES —Cont'd**On-premises consumption —Cont'd**

Sunday sales —Cont'd

Permits —Cont'd

Wine, §3-9-411.

Private clubs.

Defined, §3-9-402.

Purpose of subchapter, §3-9-401.

Restaurant.

Defined, §3-9-402.

Exemptions, §3-9-413.

Subchapter not intended to impose additional requirement on clubs to obtain permit, §3-9-404.

Wine, §3-9-411.

Wine.

Light wine.

Nudity.

Penalty, §3-5-222.

Prohibited, §3-5-222.

Regulations, §3-5-222.

Restaurant or cafe, §§3-9-301 to 3-9-307.

Sunday sales.

Permits, §3-9-411.

Ordinances.

Retail establishments.

Local closing hours, §3-4-407.

Pari-mutuel wagering.

Mixed drink permit, §3-9-238.

Partnerships.

Permits.

Proceedings on dissolution of permittee firms, §3-4-103.

Peace officers.

Enforcement of liquor laws, §3-2-209.

Authority, §3-2-210.

Penalties.

Beer, §3-5-203.

Miscellaneous prohibited practices, §3-5-221.

Retailers.

Nudity on premises, §3-5-222.

Sale or manufacture without state permit, §3-5-210.

Transportation.

Duplicate bills of lading.

Noncompliance with requirements, §3-5-218.

Exempted products.

Sale for intoxicating beverage purposes, §3-1-103.

Local option elections.

1935 act proceedings.

Violations of act pertaining to dry territories, §§3-8-310 to 3-8-312.

ALCOHOLIC BEVERAGES —Cont'd**Penalties —Cont'd**

Local option elections —Cont'd

Initiated act proceedings.

Sales, or furnishing place for sale,
in dry territory, §3-8-209.

Manufacture, sale or transportation of
alcoholic liquors.

Tax on alcoholic liquors.

Violations of provisions, §3-7-103.

Mitigation.

Responsible permittee program
participation, §3-4-806.

Nudity on premises, §§3-5-222,
3-9-101.

On-premises consumption.

Revocation of permit upon failure to
renew or pay taxes.

Late payment penalty, §3-9-234.

Sunday sales, §3-9-403.

Violations of provisions, §3-9-204.

Price regulations.

Violations of provisions, §3-7-111.

Retailer's permits.

Issuance of permit last thirty days
of even-numbered years
forbidden, §3-4-204.

Taxation.

Beer taxes.

Noncompliance with subchapter,
§3-7-403.

Payment of taxes by wholesalers
and importers.

Delinquent tax penalties,
§3-7-304.

Failure to produce records on
demand, §3-7-303.

Possession or sale of untaxed liquor,
§3-3-216.

Wine taxes.

Noncompliance with subchapter,
§3-7-504.

Wine.

Cafe or restaurant licensed to sell
wines.

Violations of provisions, §3-9-302.

Light wine, §3-5-203.

Miscellaneous prohibited
practices, §3-5-221.

Retailers.

Nudity on premises, §3-5-222.

Sale or manufacture without state
permit, §3-5-210.

Transportation.

Noncompliance with
requirements respecting
duplicate bills of lading,
§3-5-218.

ALCOHOLIC BEVERAGES —Cont'd**Penalties —Cont'd**

Wine —Cont'd

Retailers.

Nudity on premises, §3-5-222.

Permits.

Appeals, §3-4-213.

Applications.

Appeals, §3-4-213.

Contents, §3-4-209.

Denial, §3-4-212.

Fees, §3-4-208.

Denial of applications.

Refunds, §3-4-212.

Hearings, §3-4-208.

Notice requirements, §3-4-210.

Procedure for acceptance and
determination, §3-4-208.

Protests, §3-4-211.

Reapplication, §3-4-222.

Retail dealers, §§3-4-205, 3-4-604.

Time, §3-4-219.

Assignment, §3-4-217.

Beer.

Dancing privileges.

Inspection fee, §3-5-209.

Duration of state permits, §3-5-208.

Fees.

Dancing privileges.

Inspection fee, §3-5-209.

Retailers' permits.

Counties and municipalities,
§3-5-212.

State permits.

Privilege tax, §§3-5-205, 3-5-208.

Transfer of permit inspection fee,
§3-5-209.

Issuance of state permit, §3-5-206.

Local permits.

Required, §3-5-211.

Retailers' permits, §3-5-212.

Misdemeanors.

Sell or manufacture without state
permit, §3-5-210.

Oath by applicant, §3-5-214.

Retailers.

Local permits, §3-5-212.

Qualifications, §3-5-215.

Scope of state permit, §3-5-207.

Transfer of permit, §3-5-209.

Beer festival permits, §3-5-105.

Class A permit violations.

Enumeration, §3-4-403.

Fines, §3-4-402.

Class B permit violations.

Enumeration, §3-4-404.

Fines, §3-4-402.

ALCOHOLIC BEVERAGES —Cont'd**Permits —Cont'd**

- Class C permit violations.
 - Enumeration, §3-4-405.
 - Fines, §3-4-402.
- Contents, §3-4-214.
- Control division authority in absence of election, §3-8-210.
- Copies, §3-4-220.
- Criminal background check.
 - Applicants for permits, §3-2-103.
- Display, §3-4-102.
- Dissolution of permittee firms.
 - Proceedings on dissolution, §3-4-103.
- Distiller's permit, §3-4-602.
- Diversity of ownership and financial interest in geographic area.
 - Lack of considered when issuing permit, §3-4-223.
- Duplicates, §3-4-220.
- Duration, §3-4-219.
- Entitled to permits.
 - Who not entitled, §3-4-207.
- Exhibition, §3-4-102.
- Fees.
 - Applications, §3-4-208.
 - Denial of applications.
 - Refunds, §3-4-212.
- Beer.
 - Dancing privileges.
 - Inspection fee, §3-5-209.
 - Retailers' permits.
 - Counties and municipalities, §3-5-212.
 - State permits.
 - Privilege tax, §§3-5-205, 3-5-208.
 - Transfer of permit.
 - Inspection fee, §3-5-209.
- Copies, §3-4-220.
- Light wine.
 - Dancing privileges, §3-5-209.
 - Retailers' permits.
 - Counties and municipalities, §3-5-212.
 - State permits.
 - Privilege tax, §§3-5-205, 3-5-208.
 - Transfer of permit, §3-5-209.
- Private clubs, §3-9-222.
 - Renewal fees, §3-9-223.
- Renewal generally, §3-4-208.

Fiduciaries.

- Continuation of permitted business, §3-4-103.

Fines.

- Violations.
 - Authorization to impose fines, §3-4-401.
 - Classes of fines, §3-4-402.

ALCOHOLIC BEVERAGES —Cont'd**Permits —Cont'd****Fines —Cont'd****Violations —Cont'd**

- Disposition of fines, §3-4-502.
- Repeat violations, §3-4-402.
- Fingerprints.
 - Applicants to supply, §3-2-103.
- Hearings.
 - Applications, §3-4-208.
- Home-brewed beer.
 - Scope of state permit, §3-5-207.
- Hotels or restaurants, §3-9-210.
 - Fees, §3-9-212.
 - Inspection of premises and records, §3-9-232.
- Inactive status, §3-4-201.
- Information supplied by person applying for, §3-2-103.
- Invoices.
 - Failure to pay invoices, §3-4-406.
 - List of permit holders, §3-4-406.
- Kinds generally, §3-4-601.
- Lack of diversity of ownership and financial interest in geographic area.
 - Considered when issuing permit, §3-4-223.
- Large attendance facility mixed drink permit, §3-9-227.
- Liens.
 - Permit fees, §3-4-219.
- Manufacturer's permit, §3-4-602.
- Military service club mixed drink permit, §3-4-706.
- Nonresident beer sellers, §§3-5-1301 to 3-5-1310.
- Notice.
 - Applications.
 - Requirements as to notice, §3-4-210.
 - Revocation of permit, §3-4-303.
- Number.
 - Restricted, §3-4-201.
- Off-premise caterer's permits, §§3-4-901 to 3-4-905.
- Pari-mutuel mixed drink permit, §3-9-238.
- Post-exchange package permits.
 - Authorized purchasers, §3-4-703.
 - Creation, §3-4-701.
 - Expiration, §3-4-701.
 - Fees, §3-4-701.
 - Hours of lawful sales, §3-4-702.
 - Issuance, §3-4-701.
 - Military service club mixed drink permit, §3-4-706.

ALCOHOLIC BEVERAGES —Cont'd**Permits —Cont'd**

Post-exchange package permits
—Cont'd

Rules and regulations.

Adoption, §3-4-704.

Sales.

Authorized purchasers, §3-4-703.

Hours of lawful sales, §3-4-702.

Unauthorized sales, §3-4-705.

Unauthorized sales, §3-4-705.

Wholesale distributors.

Purchases from, §3-4-702.

Private clubs.

Fees, §3-9-222.

Renewal fees, §3-9-223.

Large attendance facility mixed
drink permit, §3-9-227.

Procedure for obtaining permit.

Generally, §3-9-222.

Reapplication for permit upon
denial, §3-9-228.

Renewal fees, §3-9-223.

Suspension or refusal to renew,
§3-9-210.

Taxes, §3-9-223.

Protests.

Applications, §3-4-211.

Rectifier's permit, §3-4-603.

Application, §3-4-603.

Generally, §3-4-603.

Renewal, §3-4-216.

Fees, §3-4-208.

Penalty for late renewal, §3-4-216.

Required, §3-4-101.

Responsible permittee programs,
§§3-4-801 to 3-4-807.

Certification, §3-4-805.

Compliance.

Effect, §3-4-804.

Definitions, §3-4-802.

Establishment, §3-4-803.

Fees, §3-4-807.

Fines.

Mitigation, §3-4-806.

Legislative intent, §3-4-801.

Penalties.

Mitigation, §3-4-806.

Restriction as to number, §3-4-201.

Retail dealers, §3-4-604.

Application, §3-4-604.

Prohibition on issuance of permit
when applicant interested in
another permit, §3-4-205.

Generally, §3-4-604.

Issuance of permit last thirty days
of even-numbered years
forbidden, §3-4-204.

ALCOHOLIC BEVERAGES —Cont'd**Permits —Cont'd**

Retail dealers —Cont'd

Permitted premises.

Restricted to permitted premises,
§3-4-218.

Restricted to permitted premises,
§3-4-218.

When applicant interested in
another permit.

Prohibition on issuance of permit,
§3-4-205.

Revocation of permit.

Causes for revocation, §3-4-301.

Statement of causes, §3-4-302.

Failure to pay taxes, §3-4-301.

Notice of revocation, §3-4-303.

Statement of causes of revocation,
§3-4-302.

Shipment of alcoholic liquors.

Transport permit must accompany
shipment, §3-7-106.

Sunday beer and wine permits,
§§3-9-501 to 3-9-507.

Time.

Issuance, §3-4-208.

Transfer, §3-4-217.

Transfer of permit from location to
location, §3-4-221.

Types generally, §3-4-601.

Violations.

Classes of violations.

Class A violations.

Enumeration, §3-4-403.

Fines, §3-4-402.

Class B violations.

Enumeration, §3-4-404.

Fines, §3-4-402.

Class C violations.

Enumeration, §3-4-405.

Fines, §3-4-402.

Generally, §3-4-402.

Fines.

Authorization to impose fines,
§3-4-401.

Classes of fines, §3-4-402.

Disposition, §3-4-502.

Invoices.

Failure to pay, §3-4-406.

Repeat violations, §3-4-402.

Wholesaler's permit, §3-4-605.

Act cumulative, §3-4-606.

Application, §3-4-605.

Cancellation or revocation of
permits, §3-4-606.

Cumulative nature of act, §3-4-606.

Eligibility for permits, §3-4-606.

ALCOHOLIC BEVERAGES —Cont'd**Permits —Cont'd**

Wholesaler's permit —Cont'd

Existing holders.

Application to existing holders,
§3-4-606.

Generally, §3-4-605.

Revocation of permits, §3-4-606.

Who not eligible for permits,
§§3-4-207, 3-4-606.

Wine.

Charitable auction permit.

Temporary permit, §§3-5-1501,
3-5-1506.Exemption from provisions of act,
§3-4-101.

Light wine.

Dancing privileges.

Inspection fee, §3-5-209.

Duration of state permits,
§3-5-208.

Fees.

Dancing privileges, §3-5-209.

Retailers' permits, §3-5-212.

State permits, §§3-5-205,
3-5-208.

Transfer of permit, §3-5-209.

Issuance of state permit, §3-5-206.

Local permits.

Required, §3-5-211.

Retailers' permits, §3-5-212.

Misdemeanors.

Sale or manufacture without
state permit, §3-5-210.

Oath by applicant, §3-5-214.

Retailers.

Local permits, §3-5-212.

Qualifications, §3-5-215.

Scope of state permit, §3-5-207.

Transfer of permits, §3-5-209.

Sampling permit, §3-5-104.

Post-exchange package permits,
§§3-4-701 to 3-4-706.**Price regulations.**

Additional tax.

Levy of additional tax, §3-7-111.

Disposition of proceeds, §3-7-111.

Levy of additional tax, §3-7-111.

Penalty for violation of provisions,
§3-7-111.**Private clubs.**

Advertising, §3-9-226.

Applicability of alcoholic beverage
laws.

Exception from laws, §3-9-221.

Exception from alcoholic beverage
laws, §3-9-221.**ALCOHOLIC BEVERAGES —Cont'd****Private clubs —Cont'd**

Fees.

Large attendance facility mixed
drink permit, §3-9-227.

Permits, §3-9-222.

Renewal fees, §3-9-223.

Golf tournaments, §3-9-221.

On-premises consumption.

Sunday sales.

Subchapter not intended to
impose additional
requirement on clubs to
obtain permit, §3-9-404.

Permits.

Fees, §3-9-222.

Large attendance facility mixed
drink permit, §3-9-227.

Renewal fees, §3-9-223.

Procedure for obtaining permit.

Generally, §3-9-222.

Reapplication for permit upon
denial, §3-9-228.

Renewal fees, §3-9-223.

Taxes, §3-9-223.

Reapplication for permit upon denial,
§3-9-228.

Rules and regulations, §3-9-225.

Sales.

Prohibitions, §3-9-224.

Sunday sales.

Subchapter not intended to impose
additional requirement on clubs
to obtain permit for, §3-9-404.

Taxation.

Gross proceeds or gross receipts tax,
§3-9-223.

Taxes.

Collection of delinquent state and
local taxes, §3-9-229.**Prohibited acts and practices.**Accessories guilty as principals,
§3-3-101.

Alcoholics or intoxicated persons.

Furnishing to, §3-3-209.

Beer.

Enumeration of miscellaneous
prohibited practices, §3-5-221.

Christmas.

Sale of intoxicating liquor on
Christmas prohibited, §3-3-211.

Denatured alcohol.

Sale for beverage purposes
prohibited, §3-3-214.Prima facie evidence in sale,
§3-3-214.

Equipment.

Illicit manufacture and equipment
generally, §§3-3-401 to 3-3-405.

ALCOHOLIC BEVERAGES —Cont'd

Prohibited acts and practices

—Cont'd

Licenses.

Sale or possession without license,
§3-3-205.

Tax receipts.

Sale or delivery to retailer without
valid receipt, §3-3-206.

Manufacture.

Illicit manufacture and equipment,
§§3-3-401 to 3-3-405.

Manufacturer-seller relationships.

Exclusivity agreements, §3-3-213.

Generally, §3-3-212.

Minors.

Handling of alcoholic beverages by
minor, §3-3-204.

Knowingly furnishing to minor,
§3-3-202.

Posting of warning notices, §3-3-202.

Purchase or possession by minor,
§3-3-203.

Unknowingly furnishing to minor,
§3-3-201.

Multiple offenses, §3-3-103.

Bonds for good behavior, §3-3-103.

Possession without license, §3-3-205.

Sales.

Alcoholics or intoxicated persons,
§3-3-209.

License tax receipts.

Sale or delivery to retailer without
valid receipt, §3-3-206.

Manufacturer-seller relationships.

Exclusivity agreements, §3-3-213.

Generally, §3-3-212.

Possession or procuring orders
unlawfully, §3-3-208.

Sale without license, §3-3-205.

Sunday sales, §3-3-210.

Sentences, §3-3-102.

Solicitation or taking orders,
§3-3-310.

Taxation.

Possession or sale of untaxed liquor
unlawful, §3-3-216.

Wine.

Disaster relief.

Expanding operations during
period of program, §3-5-806.

Light wines.

Enumeration of miscellaneous
prohibited practices, §3-5-221.

Prosecuting attorneys.

Enforcement of liquor laws.

Special prosecutor, §3-2-301.

ALCOHOLIC BEVERAGES —Cont'd

Records.

Beer, §3-5-219.

Distillers and wholesalers of spirituous
liquors.

Tax on alcoholic liquors, §3-7-113.

Division of alcoholic beverage control.

Authentication of records, §3-2-204.

Licensees' records, §3-2-211.

Inspection, §3-2-211.

On-premises consumption.

Inspection of premises and records,
§3-9-232.

Taxation, §§3-7-113, 3-7-303.

Wine.

Incentive grants, §3-5-906.

Light wine, §3-5-219.

Subsidies, §3-5-1006.

Rectifiers, §3-4-603.

Refunds.

Wrongful collections of tax, §3-4-503.

Religion.

Retail liquor business.

Operation of business within certain
distance of church, §3-4-206.

Reports.

Beer, §3-5-219.

Licensees' reports, §3-2-211.

Inspection, §3-2-211.

Taxation, §3-7-105.

Additional permit fees and taxes,
§3-7-111.

Beer taxes, §3-7-401.

Penalty for failure to file timely
report, §3-7-403.

Rules and regulations, §3-7-404.

Payment by wholesalers and

importers.

Monthly report, §3-7-302.

Wine taxes, §3-7-502.

Native wines, §3-7-506.

Penalty for failure to file timely
report, §3-7-504.

Wine.

Light wine, §3-5-219.

Residence.

Brandy.

Application for permit, §3-6-104.

Responsible permittee programs,

§§3-4-801 to 3-4-807.

Certification, §3-4-805.

Compliance.

Effect, §3-4-804.

Definitions, §3-4-802.

Establishment, §3-4-803.

Fees, §3-4-807.

Fines.

Mitigation, §3-4-806.

ALCOHOLIC BEVERAGES —Cont'd
Responsible permittee programs
 —Cont'd

Penalties.

Mitigation, §3-4-806.

Purpose, §3-4-801.

Retail dealers.

Church.

Operation of business within certain distance of church prohibited, §3-4-206.

Failure to obtain spirituous liquors from approved sources.

Tax on alcoholic liquors, §3-7-114.

Local option elections.

Effect of dry vote, §3-8-102.

On-premises consumption generally, §§3-9-101 to 3-9-307.

Schoolhouse.

Operation of business within certain distance of schoolhouse prohibited, §3-4-206.

Special retail tax.

Duties, §3-7-201.

Retail establishments.

Local closing hours, §3-4-407.

Violating local closing hours, §3-4-407.

Rules and regulations.

Beer.

Definitions, §3-5-202.

Excise tax on beer, §3-7-404.

Retailers.

Nudity on premises, §3-5-222.

Regulation by municipal corporations, §3-5-213.

Brandy law, §3-6-103.

Director of alcoholic beverage control division.

Adoption and promulgation of rules and regulations, §3-2-206.

Supervision and control of nonresident beer sellers' permits, §3-2-205.

Dry territories.

Prohibited acts and practices.

Authority to promulgate, §3-3-303.

Fees.

Sunday sales.

Adoption and enforcement, §3-9-408.

Manufacture, sale or transportation of alcoholic liquors.

Tax on alcoholic liquors, §3-7-107.

Microbrewery-restaurants.

Rulemaking authority, §3-5-1208.

Nudity on premises, §§3-5-222, 3-9-101.

ALCOHOLIC BEVERAGES —Cont'd
Rules and regulations —Cont'd

On-premises consumption.

Adoption and enforcement, §3-9-205.

Private clubs, §3-9-225.

Wine.

Bottling of local wines in sizes convenient for interstate or intrastate sale.

Director to establish regulations, §3-5-602.

Incentive grants.

Authority to establish rules and regulations, §3-5-903.

Retailers.

Nudity on premises, §3-5-222.

Regulation by municipal corporations, §3-5-213.

Sales.

Illicit stills, §3-3-404.

Manufacturer-seller relationships.

Prohibited acts and practices, §§3-3-212, 3-3-213.

Exclusivity agreements, §3-3-213.

Generally, §3-3-212.

Nonresident beer sellers, §§3-5-1301 to 3-5-1310.

On-premises consumption.

Sunday sales.

Authorization of, §3-9-215.

Large attendance facilities, §3-9-216.

Private clubs.

Prohibitions, §3-9-224.

Prohibited acts and practices.

Furnishing to alcoholics or intoxicated persons, §3-3-209.

Manufacturer-seller relationships.

Exclusivity agreements, §3-3-213.

Generally, §3-3-212.

Possession or procuring orders unlawfully, §3-3-208.

Sale or delivery to retailer without valid license tax receipt, §3-3-206.

Sale without license, §3-3-205.

Sunday sales, §3-3-210.

Sunday sales.

Prohibited acts and practices, §3-3-210.

Generally, §3-3-210.

Wine.

Bottling of local wine in size convenient for sale, §§3-5-602, 3-5-603.

Legislative determinations and intent, §3-5-601.

ALCOHOLIC BEVERAGES —Cont'd**Schoolhouses.**

Retail liquor business.

Operation of business within certain distance of schoolhouse prohibited, §3-4-206.

Seals and sealed instruments.

Board of alcoholic beverage control, §3-2-204.

Searches and seizures.

Authority of enforcement agents, §3-2-210.

Dry territories.

Prohibited acts and practices.

Authority to seize beverages, §3-3-311.

Determination of interest in seized beverages, §3-3-313.

Procedure upon seizure of beverages, §3-3-312.

Sale of confiscated beverages, §3-3-314.

Surrender of confiscated beverages.

Failure to surrender, §3-3-315.

Enforcement of liquor laws.

Destruction of liquor.

Issuance of search warrants, §3-2-304.

Illicit manufacture and equipment.

Seizure and forfeiture of vehicles, §3-3-403.

Sentencing.

Prohibited acts and practices, §3-3-102.

Sheriffs.

Enforcement of liquor laws.

Temporary officer to act in place of sheriff, §3-2-301.

Ships and shipping.

Methods of identifying liquors shipped into state, §3-7-112.

Permits.

Transport permit must accompany permit, §3-7-106.

Short title, §3-1-101.**Solicitation.**

Board of alcoholic beverage control.

Acceptance of bribe or solicitation prohibited, §3-2-208.

Division of alcoholic beverage control.

Acceptance of bribe or solicitation prohibited, §3-2-208.

Dry territories.

Prohibited acts and practices, §3-3-310.

ALCOHOLIC BEVERAGES —Cont'd**Solicitation —Cont'd**

Enforcement division of alcoholic beverage control.

Acceptance of bribe or solicitation prohibited, §3-2-208.

Special retail tax.

General provisions, §§3-7-201 to 3-7-307.

Spirituuous beverages.

Defined, §3-1-102.

Distribution.

Registration of brands and labels, §3-2-403.

State of Arkansas.

Police power of state.

On-premises consumption.

Rules and regulations, §3-9-205.

State police.

Enforcement of liquor laws.

Powers and duties of state police, §3-2-303.

States.

Wine.

Disaster relief.

Acquisition of ingredients from outside state, §3-5-803.

Storage.

Beer, §3-5-216.

Wine.

Light wine, §3-5-216.

Subpoenas.

Board of alcoholic beverage control.

Conducting or hearing appeals, §3-2-215.

Subsidies.

Wine, §§3-5-1001 to 3-5-1007.

Sunday beer and wine permits.

Applicability of other provisions, §3-9-502.

Application for permit, §3-9-504.

Contents of application, §3-9-504.

Definitions, §3-9-501.

Duration of permit, §3-9-504.

Elections.

Referendum authorizing permit in hotels and restaurants, §3-9-506.

Fees.

Permit fee, §3-9-503.

Schedule of fees for different permits, §3-9-505.

Hours of operation, §3-9-507.

Permit requirements, §3-9-503.

Referendum authorizing permit in hotels and restaurants, §3-9-506.

Renewal fee, §3-9-505.

Requirements for permit, §3-9-503.

ALCOHOLIC BEVERAGES —Cont'd**Sunday beer and wine permits**

—Cont'd

Scope of provisions.

Applicability of other provisions,
§3-9-502.**Sunday sales.**Prohibited acts and practices,
§3-3-210.Sunday beer and wine permits,
§§3-9-501 to 3-9-507.**Suppliers of beer and light wine.**Wholesalers' protection from arbitrary
actions of suppliers, §§3-5-1101 to
3-5-1111.**Syrups.**

Exempted products, §3-1-103.

Taxation.Additional permit fees and taxes,
§3-7-111.**Beer.**

Actions to recover taxes, §3-5-223.

Payment of tax, §§3-7-105, 3-7-401.

Penalty for failure to timely pay,
§3-7-403.

Rules and regulations, §3-7-404.

Penalties for noncompliance,
§3-7-403.

Privilege tax, §3-5-205.

Time for payment, §3-5-208.

Rebate for qualified manufacturers,
§3-7-116.

Reports, §§3-7-105, 3-7-401.

Penalty for failure to file timely
report, §3-7-403.

Rules and regulations, §3-7-404.

Rules and regulations, §3-7-404.

Stamp no longer required, §3-7-105.

Brandy.Collection of fees and taxes,
§3-6-106.

Sales within state, §3-6-105.

Collection of fees and taxes,
§3-6-106.

City taxes, §3-4-202.

Collection of tax.Refunds of wrongful collections,
§3-4-503.Suits to restrain collection
prohibited, §3-4-503.**Contracts.**Payment of taxes by wholesalers
and importers.

Right to contract, §3-7-306.

County taxes, §3-4-202.

"Person" defined, §3-7-102.

ALCOHOLIC BEVERAGES —Cont'd**Taxation —Cont'd****Date.**Payment of taxes by wholesalers
and importers.

Due date, §3-7-301.

Monthly report and payment,
§3-7-302.**Definitions.**

Person, §3-7-102.

Delinquent taxes.Manufacture, sale or transportation
of alcoholic liquors.Collection of delinquent taxes,
§3-7-109.**Division of alcoholic beverage control.**Rights, powers, authority and duties
of department.

Tax collection excepted, §3-2-205.

Enforcement division of alcoholic
beverage control.Rights, powers, authority and duties
of division.

Tax collection excepted, §3-2-205.

Failure to obtain spirituous liquors
from approved sources, §3-7-114.**Gross receipts tax.**

On-premises consumption, §3-9-213.

Identifying liquors shipped into state.Methods of identifying liquors,
§3-7-112.**Liens.**

Special retail tax.

Execution of lien, §3-7-203.

Procedure for obtaining lien,
§3-7-202.**Manufacture of alcoholic liquors.**

Collection of delinquent taxes.

Penalty, §3-7-109.

Disposition of funds, §3-7-108.

No duplicate tax intended, §3-7-101.

Penalty for violations, §3-7-103.

Rate of tax, §3-7-104.

Recovery of tax wrongfully collected,
§3-7-110.

Rules and regulations, §3-7-107.

Microbrewery-restaurants.State excise tax payment by
licensees, §3-5-1205.**Military sales.**Payment of taxes by wholesalers
and importers.

Rules and regulations, §3-7-307.

Misdemeanors.Payment of taxes by wholesalers
and importers.Failure to produce records on
demand, §3-7-303.

ALCOHOLIC BEVERAGES —Cont'd**Taxation —Cont'd**

Misdemeanors —Cont'd

Possession or sale of untaxed liquor,
§3-3-216.

Municipal corporations, §3-4-202.

On-premises consumption.

Disposition of fees and taxes
collected, §3-9-237.

Gross receipts tax, §3-9-213.

Revocation of permit upon failure to
renew or pay taxes, §3-9-234.

Supplemental taxes, §3-9-213.

Levied by political subdivisions,
§3-9-214.

Payment of tax, §3-7-105.

Beer taxes, §3-7-401.

Penalty for failure to timely pay,
§3-7-403.

Rules and regulations, §3-7-404.

Contracts.

Right to contract.

Wholesalers and importers,
§3-7-306.

Date.

Due date.

Payment by wholesalers and
importers, §3-7-301.

Monthly report and payment.

Wholesalers and importers,
§3-7-302.

Delinquent tax penalties.

Wholesalers and importers,
§3-7-304.

Importers generally, §§3-7-301 to
3-7-307.

Military sales.

Rules and regulations.

Payment of taxes by wholesalers
and importers, §3-7-307.

Nonpayments, §3-7-304.

Penalties.

Payment of taxes by wholesalers
and importers.

Failure to produce records on
demand, §3-7-303.

Wholesalers and importers,
§3-7-303.

Delinquent tax penalties,
§3-7-304.

Records.

Payment of taxes by wholesalers
and importers, §3-7-303.

Reports.

Monthly report.

Payment of taxes by wholesalers
and importers, §3-7-302.

Right to contract, §3-7-306.

ALCOHOLIC BEVERAGES —Cont'd**Taxation —Cont'd**

Payment of tax —Cont'd

Rules and regulations.

Military sales.

Payment of taxes by wholesalers
and importers, §3-7-307.

Time.

Due date.

Payment by wholesalers and
importers, §3-7-301.

Monthly report and payment.

Wholesalers and importers,
§3-7-302.

Wholesalers generally, §§3-7-301 to
3-7-307.

Wine taxes, §3-7-502.

Penalty for failure to timely pay,
§3-7-504.

Penalties.

Beer taxes.

Noncompliance with subchapter,
§3-7-403.

Payment of taxes by wholesalers
and importers.

Delinquent tax penalties,
§3-7-304.

Failure to produce records on
demand, §3-7-303.

Possession or sale of untaxed liquor,
§3-3-216.

Wine taxes.

Noncompliance with subchapter,
§3-7-504.

Permits.

Additional permit fees and taxes,
§3-7-111.

Manufacture, sale or transportation
of alcoholic liquors.

Revocation of permit, §3-7-103.

Revocation of permit upon failure to
pay taxes, §3-4-301.

Transport permit must accompany
shipment, §3-7-106.

Person.

Defined, §3-7-102.

Possession or sale of untaxed liquor
unlawful, §3-3-216.

Price regulation.

Disposition of proceeds, §3-7-111.

Levy of additional tax, §3-7-111.

Violations of provisions, §3-7-111.

Private clubs.

Collection of delinquent state and
local taxes, §3-9-229.

Gross proceeds or gross receipts tax,
§3-9-223.

Rate of tax, §3-7-104.

ALCOHOLIC BEVERAGES —Cont'd**Taxation —Cont'd**

Rebate for qualified manufacturers,
§3-7-116.

Records.

Distillers of spirituous liquors,
§3-7-113.

Payment of taxes by wholesalers
and importers, §3-7-303.

Wholesalers of spirituous liquors,
§3-7-113.

Refunds.

Wrongful collections, §3-4-503.

Reporting of tax, §3-7-105.

Additional taxes, §3-7-111.

Beer taxes, §3-7-401.

Penalty for failure to file timely
report, §3-7-403.

Rules and regulations, §3-7-404.

Payment of taxes by wholesalers
and importers.

Monthly report, §3-7-302.

Wine taxes, §3-7-502.

Native wines, §3-7-506.

Penalty for failure to file timely
report, §3-7-504.

Restraining collection of tax.

Suits to restrain collection
prohibited, §3-4-503.

Retailers of spirituous liquors.

Failure to obtain liquors from
approved sources, §3-7-114.

Rules and regulations.

Beer taxes, §3-7-404.

Manufacture, sale or transportation
of alcoholic liquors, §3-7-107.

Military sales, §3-7-307.

Payment of taxes by wholesalers
and importers.

Sales to military, §3-7-307.

Wine taxes.

Generally, §3-7-501.

Sale of alcoholic beverages.

Collection of delinquent taxes,
§3-7-109.

Disposition of funds, §3-7-108.

No duplicate tax intended, §3-7-101.

Penalty for violations, §3-7-103.

Rate of tax, §3-7-104.

Recovery of tax wrongfully collected,
§3-7-110.

Rules and regulations, §3-7-107.

Untaxed liquor sales unlawful,
§3-3-216.

Shipment of alcoholic liquors.

Methods of identifying liquors
shipped into state, §3-7-112.

ALCOHOLIC BEVERAGES —Cont'd**Taxation —Cont'd****Shipment of alcoholic liquors —Cont'd**

Permit to transport must accompany
shipment, §3-7-106.

Special retail tax.

Alternative remedies, §3-7-204.

Collection, §3-7-201.

Alternative remedies, §3-7-204.

Generally, §3-7-201.

Liens.

Execution, §3-7-203.

Funds.

Disposition, §3-7-205.

Imposition of tax, §3-7-201.

Liens.

Execution, §3-7-203.

Procedure for obtaining, §3-7-202.

Suits to restrain collection of tax
prohibited, §3-4-503.

Supplemental taxes.

On-premises consumption, §3-9-213.

Levied by political subdivisions,
§3-9-214.

Time.

Payment of taxes by wholesalers
and importers.

Due date, §3-7-301.

Monthly report and payment,
§3-7-302.

Transportation.

Delinquent taxes collected, §3-7-109.

Disposition of funds, §3-7-108.

Identification of liquors shipped into
state, §3-7-112.

No duplicate tax intended, §3-7-101.

Penalty for violations, §3-7-103.

Permit to transport must accompany
shipment, §3-7-106.

Recovery of tax wrongfully collected,
§3-7-110.

Rules and regulations, §3-7-107.

Wholesale dealers and distributors.

Failure to obtain liquors from
approved sources, §3-7-114.

Payment of tax.

Generally, §3-7-301.

Wrongful collections.

Refunds of wrongful collections,
§3-4-503.

Title of act, §3-1-101.**Toilet preparations.**

Exempted products, §3-1-103.

Transcripts.

Proceedings before director of alcoholic
beverage control division.

Transcript fees, §3-2-217.

ALCOHOLIC BEVERAGES —Cont'd**Transfer of permits from location to location, §3-4-221.****Transportation.**

Beer, §3-5-217.

Duplicate bills of lading, §3-5-218.

Identification of liquors shipped into state, §3-7-112.

Illicitly distilled beverages, §3-3-402.

Seizure and forfeiture of vehicles, §3-3-403.

Local option elections.

1935 act proceedings.

C.O.D. shipments, §3-8-315.

Permits, §3-7-106.

United States.

Licenses.

Sale of liquor or beer on federal license without state license, §3-3-215.

Military sales.

Taxation.

Payment by wholesalers and importers.

Rules and regulations, §3-7-307.

Wine.

Subsidies.

Federal legislation obviating native wine tax.

Program to be established in event of, §3-5-1003.

Implementation of subchapter dependent on federal legislation, §3-5-1002.

Vegetables.

Wine.

Importation of fruit and vegetables for use in local wine subject to tax, §3-5-605.

Venue.

Wholesalers' protection from arbitrary actions of suppliers.

Civil action for violations, §3-5-1106.

Vinegar.

Exempted products, §3-1-103.

Vinous.

Defined, §3-1-102.

Vinous beverages.

Distribution.

Registration of brands and labels, §3-2-403.

Exempted products, §3-1-103.

Violations.

Fines.

Multiple offenses, §3-4-402.

ALCOHOLIC BEVERAGES —Cont'd
Waiver.

Wholesalers' protection from arbitrary actions of suppliers.

Waiver of rights prohibited, §3-5-1105.

Warehouses.

Beer and light wine, §3-5-216.

Warning notices.

Prohibited acts and practices regarding minors.

Posting of notice, §3-3-202.

Wholesale dealers and distributors.

Beer, §§3-5-101, 3-5-202.

Distribution.

Acquisition of right to sell, ship or distribute a label, §3-2-408.

Applicability of subchapter.

Incorporation of subchapter into division approvals, §3-2-411.

Beer.

Submission of label to division, §3-2-409.

Dual distributorship prohibited, §3-2-412.

Inapplicability of subchapter.

Arkansas native wine, §3-2-411.

Label submission requirements.

Beer, malt products or light wine, §3-2-409.

Registration of brands and labels. Spirituous and vinous beverages, §3-2-403.

Light wine.

Submission of label to division, §3-2-409.

Malt products.

Submission of label to division, §3-2-409.

Prohibition of dual distributorships, §3-2-412.

Request to change wholesalers.

Appeal, §3-2-406.

Automatic approval, §3-2-407.

Contents of application, §3-2-404.

Disposition of proceedings, §3-2-405.

No objection filed.

Automatic approval, §3-2-407.

Notice and hearing, §§3-2-405, 3-2-406.

Time, §3-2-406.

Obligations, §3-2-405.

Presentation of findings, §3-2-406.

Spirituous and vinous beverages.

Acquisition of right to sell, ship or distribute a label, §3-2-408.

ALCOHOLIC BEVERAGES —Cont'd**Wholesale dealers and distributors —Cont'd****Distribution —Cont'd**

Spirituuous and vinous beverages —Cont'd

Designation of licensed wholesaler, §3-2-403.

Registration of brands and labels, §3-2-403.

Successors.

Agreements with wholesalers.

Terms and conditions binding on successor, §3-2-410.

Waiver of chapter requirements, §3-2-411.

Wholesaler agreements.

Terms and conditions binding on successor, §3-2-410.

Dual distributorship prohibited, §3-2-412.

Failure to obtain spirituous liquors from approved sources.

Tax on alcoholic liquors, §3-7-114.

Local option elections.

1935 act proceedings.

Wholesale of intoxicating liquor in prohibited territory, §3-8-317.

Effect of dry vote, §3-8-103.

Records of wholesalers of spirituous liquors.

Tax on alcoholic liquors, §3-7-113.

Storing, transporting and selling at wholesale.

Fee for privilege, §3-4-605.

Taxation.

Failure to obtain liquors from approved sources, §3-7-114.

Payment of tax.

Generally, §3-7-301.

Wholesalers' protection from arbitrary actions of suppliers, §§3-5-1101 to 3-5-1111.

Wholesalers' protection from arbitrary actions of suppliers.

Beer and light wines, §§3-5-1101 to 3-5-1111.

Actions.

Civil action for violations, §3-5-1106.

Applicability of subchapter to future agreements, §3-5-1103.

Transferee continues under agreement, §3-5-1103.

Arbitration.

Prohibited acts by supplier.

Compensation upon supplier's violation, §3-5-1108.

ALCOHOLIC BEVERAGES —Cont'd**Wholesalers' protection from arbitrary actions of suppliers —Cont'd**

Beer and light wines —Cont'd

Attorney's fees.

Civil action for violations, §3-5-1106.

Contracts.

Applicability of subchapter to future agreements, §3-5-1103.

Conditions for modification of agreement, §3-5-1111.

Good faith requirements, §3-5-1111.

Notice requirements, §3-5-1111.

Waiver of rights.

Prohibited, §3-5-1105.

Cumulative nature of subchapter, §3-5-1104.

Damages.

Civil action for violations, §3-5-1106.

Definitions, §3-5-1102.

Injunctive relief.

Violations of subchapter, §3-5-1106.

Legislative intent, §3-5-1101.

Prohibited acts by supplier, §3-5-1107.

Compensation upon supplier's violation, §3-5-1108.

Prohibited acts by wholesaler, §3-5-1109.

Purpose of subchapter.

Legislative intent, §3-5-1101.

Transfer of wholesaler's business, §3-5-1110.

Interference prohibited, §3-5-1110.

Venue.

Civil action for violations, §3-5-1106.

Violations of subchapter.

Civil action for damages, §3-5-1106.

Waiver of rights.

Prohibited, §3-5-1105.

Wholesale support center permits.

Application for permit, §3-5-1306.

Authorized transactions, §3-5-1304.

Examination of permittee, §3-5-1309.

Issuance criteria, §3-5-1302.

Primary American source of supply, §3-5-1308.

Prohibited actions, §3-5-1305.

Wholesale support center, defined, §3-5-1302.

ALCOHOLIC BEVERAGES —Cont'd
Wine.

Additional administrative personnel.
Light wine.

Employment for enforcement of
subchapter, §3-5-225.

Applications.

Incentive grants, §3-5-905.

Subsidies, §3-5-1005.

Blending imported wines with local
wines.

Subject to tax, §3-5-606.

Bottling of local wines.

Sizes convenient for interstate or
intrastate sale, §3-5-603.

Regulations established by
director, §3-5-602.

Charitable auction.

Authorized location for conducting
auction, §3-5-1502.

Commission or promotional fee,
prohibition, §3-5-1505.

Consumption on premises,
prohibition, §3-5-1505.

Disposition of proceeds, §3-5-1503.

Donation or purchase.

Obtaining wine to be auctioned,
§3-5-1504.

Gross receipts act.

Gross receipts not subject to,
§3-5-1506.

Number within calendar year,
restriction, §3-5-1505.

Prohibited activities, §3-5-1505.

Rules, §3-5-1507.

Temporary permit, §3-5-1501.

Duration, fee, §3-5-1506.

Complimentary bottle of wine.

Cabins and cottages, §3-5-106.

Definitions.

Light wine, §3-5-202.

On-premises consumption, §3-9-301.

Disaster relief.

Acquisition of ingredients from
outside state, §3-5-803.

Citation of subchapter, §3-5-801.

Construction of act with existing
laws, §3-5-804.

Declaration of relief program,
§3-5-805.

Order of director, §3-5-805.

Expanding operations during period
of program, §3-5-806.

Ingredients.

Acquisition of ingredients from
outside state, §3-5-803.

Intent of legislature, §3-5-802.

ALCOHOLIC BEVERAGES —Cont'd
Wine —Cont'd**Disaster relief —Cont'd**

Legislative purpose and intent,
§3-5-802.

Production of wine under relief
program subject to tax,
§3-5-807.

Short title, §3-5-801.

Studies of curtailment of production,
§3-5-805.

Title of subchapter, §3-5-801.

Duties.

Generally, §3-5-703.

Exempted products, §3-1-103.

Fines.

Light wine.

Miscellaneous prohibited
practices, §3-5-221.

Miscellaneous prohibited practices,
§3-5-221.

Free trade among small wineries,
§§3-5-1601 to 3-5-1609.

Bond of winery, §3-5-1608.

Days on which sales may be made,
§3-5-1607.

Definition of small farm winery,
§3-5-1601.

Licensing.

Existing native winery licenses,
§3-5-1604.

Fees, §3-5-1605.

Restaurant wine license,
§3-5-1603.

Retail malt beverage license,
§3-5-1603.

Small farm wineries, §3-5-1602.

Rules, §3-5-1606.

Violation of provisions, §3-5-1609.

Fruit flavors imported for use in local
wines, §§3-5-604, 3-5-605.

Funds.**Incentive grants.**

Agricultural marketing grants
fund.

Establishment and use,
§3-5-908.

Light wine.

Disposition of funds, §3-5-224.

Subsidies, §3-5-1007.

Grants.

Incentive grants, §§3-5-901 to
3-5-908.

Herb flavors for production of native
wine, §§3-5-604, 3-5-605.

Importing natural fruit and herb
flavors for production of wine,
§§3-5-604, 3-5-605.

ALCOHOLIC BEVERAGES —Cont'd**Wine —Cont'd**

Incentive grants, §§3-5-901 to 3-5-908.

Interstate or intrastate sale.

Bottling of local wines in convenient sizes, §§3-5-602, 3-5-603.

Labels and labeling.

Sacramental wine, §3-7-115.

Licenses.

Additional license to sell native wines not required, §3-5-102.

Restaurant license.

Definition of "license," §3-9-301.

Qualifications of applicants for license, §3-9-305.

Restrictions on licenses, §3-9-303.

Revocation or suspension of license, §3-9-307.

Small farm wineries, §3-5-1603.

Small farm wineries, §3-5-1602.

Fees, §3-5-1605.

Restaurant license, §3-5-1603.

Retail malt beverage license, §3-5-1603.

Light wine.

Additional administrative personnel.

Employment for enforcement of subchapter, §3-5-225.

Consumer.

Defined, §3-5-202.

Distribution.

Label submission to division, §3-2-409.

Distributor.

Defined, §3-5-202.

Fines.

Miscellaneous prohibited practices, §3-5-221.

Funds.

Disposition, §3-5-224.

Intoxicating liquor.

Defined, §3-5-202.

Legislative declaration.

Purpose of subchapter, §3-5-201.

Local option elections, §3-8-401.

Manufacture.

Tax on manufacture.

Rate of tax, §3-7-104.

Miscellaneous prohibited practices, §3-5-221.

Misdemeanors.

Miscellaneous prohibited practices, §3-5-221.

Retailers.

Nudity on premises, §3-5-222.

Sale or manufacture without state permit, §3-5-210.

ALCOHOLIC BEVERAGES —Cont'd**Wine —Cont'd**

Light wine —Cont'd

Municipal corporations.

Permits.

Generally, §3-5-211.

Retailers.

Permits, §3-5-212.

Regulation, §3-5-213.

Penalties, §3-5-203.

Miscellaneous prohibited practices, §3-5-221.

Retailers.

Nudity on premises, §3-5-222.

Sale or manufacture without state permit, §3-5-210.

Transportation.

Noncompliance with requirements respecting duplicate bills of lading, §3-5-218.

Permits.

Dancing privileges.

Inspection fee, §3-5-209.

Duration of state permits, §3-5-208.

Fees.

Dancing privileges, §3-5-209.

Retailers' permits, §3-5-212.

State permits, §§3-5-205, 3-5-208.

Transfer of permit, §3-5-209.

Issuance of state permit, §3-5-206.

Local permits.

Required, §3-5-211.

Retailers' permits, §3-5-212.

Misdemeanors.

Sell or manufacture without state permit, §3-5-210.

Oath by applicant, §3-5-214.

Retailers.

Local permits, §3-5-212.

Qualifications, §3-5-215.

Scope of state permit, §3-5-207.

Transfer of permits, §3-5-209.

Person, §3-5-202.

Privilege tax, §§3-5-205, 3-5-208.

Privilege to manufacture, sell, etc., §3-5-204.

Purpose of subchapter, §3-5-201.

Records, §3-5-219.

Reports, §3-5-219.

Retail dealers.

Defined, §3-5-202.

Nudity on premises.

Penalties, §3-5-222.

Permits, §§3-5-211, 3-5-212.

ALCOHOLIC BEVERAGES —Cont'd**Wine —Cont'd**

Light wine —Cont'd

Retail dealers —Cont'd

Qualifications of retail permittees,
§3-5-215.

Regulation, §3-5-213.

Rules and regulations.

Defined, §3-5-202.

Nudity on premises, §3-5-222.

Retailers.

Regulation by municipal
corporations, §3-5-213.

Sales.

Tax on sales.

Additional taxes, §3-7-111.

Rate of tax, §3-7-104.

Storage, §3-5-216.

Taxation.

Actions to recover taxes, §3-5-223.

Additional taxes, §3-7-111.

Manufacture of light wine.

Rate of tax, §3-7-104.

Privilege tax, §3-5-205.

Time for payment, §3-5-208.

Sale of light wine.

Rate of tax, §3-7-104.

Transportation, §3-5-217.

Bills of lading.

Duplicate bills, §3-5-218.

Warehouse.

Defined, §3-5-202.

Wholesale dealer and distributor.

Defined, §3-5-202.

Wholesalers' protection from
arbitrary actions of suppliers,
§§3-5-1101 to 3-5-1111.

Winery.

Defined, §3-5-202.

Manufacture.

Legislative determinations and
intent, §3-5-601.

Misdemeanors.

Light wine.

Miscellaneous prohibited
practices, §3-5-221.

Sale or manufacture without state
permit, §3-5-210.

Municipal corporations.

Light wine.

Permits.

Generally, §3-5-211.

Retailers.

Permits, §3-5-212.

Regulation, §3-5-213.

Natural fruit flavors for production of
native wine, §3-5-604.

ALCOHOLIC BEVERAGES —Cont'd**Wine —Cont'd**

On-premises consumption.

Restaurant or cafe, §§3-9-301 to
3-9-307.

Sunday sales.

Permits, §3-9-411.

Penalties.

Cafe or restaurant licensed to sell
wines.

Violations of provisions, §3-9-302.

Light wine, §3-5-203.

Miscellaneous prohibited
practices, §3-5-221.

Retailers.

Nudity on premises, §3-5-222.

Sale or manufacture without state
permit, §3-5-210.

Transportation.

Noncompliance with
requirements respecting
duplicate bills of lading,
§3-5-218.

Retailers.

Nudity on premises, §3-5-222.

Permits.

Charitable auction permit.

Temporary permit, §3-5-1501.

Duration, fee, §3-5-1506.

Exemption from provisions of act,
§3-4-101.

Light wine.

Dancing privileges.

Inspection fee, §3-5-209.

Duration of state permits,
§3-5-208.

Fees.

Dancing privileges, §3-5-209.

Retailers' permits, §3-5-212.

State permits, §§3-5-205,
3-5-208.

Transfer of permit, §3-5-209.

Issuance of state permit, §3-5-206.

Local permits.

Required, §3-5-211.

Retailers' permits, §3-5-212.

Misdemeanors.

Sale or manufacture without
state permit, §3-5-210.

Oath by applicant, §3-5-214.

Retailers.

Local permits, §3-5-212.

Qualifications, §3-5-215.

Scope of state permit, §3-5-207.

Transfer of permits, §3-5-209.

Sampling permit, §3-5-104.

ALCOHOLIC BEVERAGES —Cont'd**Wine —Cont'd**

- Prohibited acts and practices.
 - Disaster relief.
 - Expanding operations during period of program, §3-5-806.
 - Light wines.
 - Enumeration of miscellaneous prohibited practices, §3-5-221.
- Records.
 - Incentive grants, §3-5-906.
 - Light wine, §3-5-219.
 - Subsidies, §3-5-1006.
- Reports.
 - Light wine, §3-5-219.
- Restaurant or cafe.
 - Application for license, §3-9-305.
 - Qualifications, §3-9-305.
 - Cities over 30,000.
 - Restrictions on license, §3-9-303.
 - Cities over 55,000 but under 60,000.
 - Sale by restaurant located near certain cities, §3-9-304.
 - Cities over 75,000.
 - Restrictions on license, §3-9-303.
- Definitions, §3-9-301.
- Director.
 - Defined, §3-9-301.
- Penalty for violation of provisions, §3-9-302.
- Person.
 - Defined, §3-9-301.
- Prohibited acts, §3-9-306.
- Revocation or suspension of license.
 - Proceedings for revocation or suspension, §3-9-307.
- Violations of provisions.
 - Penalty for violation, §3-9-302.
- "Wine" or "wines.."
 - Defined, §3-9-301.
- Retail dealers, §3-5-213.
 - Qualifications of retail permittees, §3-5-215.
- Taxation, §3-4-202.
- Rules and regulations.
 - Bottling of local wines in sizes convenient for sale, §3-5-602.
- Incentive grants.
 - Authority to establish rules and regulations, §3-5-903.
- Retailers.
 - Nudity on premises, §3-5-222.
 - Regulation by municipal corporations, §3-5-213.
- Sacramental wine, §3-7-115.

ALCOHOLIC BEVERAGES —Cont'd**Wine —Cont'd**

- Sales.
 - Bottling of local wines in sizes convenient for interstate or intrastate sale, §3-5-603.
 - Regulations established by director, §3-5-602.
- Legislative determinations and intent, §3-5-601.
- Storage.
 - White wine, §3-5-216.
- Subsidies.
 - Applications, §3-5-1005.
 - Eligibility, §3-5-1004.
- Fund.
 - Wine grape, berry, fruit and vegetable subsidy fund, §3-5-1007.
- Intent of legislature, §3-5-1001.
- Legislative determinations and intent, §3-5-1001.
- Payments, §3-5-1004.
 - Amount, §3-5-1004.
- Records, §3-5-1006.
- United States.
 - Federal legislation obviating native wine tax.
 - Program to be established in event of, §3-5-1003.
 - Implementation of subchapter dependent on federal legislation, §3-5-1002.
- Wine grape, berry, fruit and vegetable subsidy fund, §3-5-1007.
- Sunday beer and wine permits, §§3-9-501 to 3-9-507.
- Tasting events, §3-5-104.
- Taxation, §3-7-506.
 - Blending imported wines with local wines subject to tax, §3-5-606.
- Disaster relief.
 - Production of wine under relief program subject to tax, §3-5-807.
- Enforcement.
 - Joint enforcement, §3-7-505.
- Fruits and vegetables imported for use in local wines subject to tax, §3-5-605.
- Joint enforcement, §3-7-505.
- Light wine.
 - Actions to recover taxes, §3-5-223.
 - Privilege tax, §3-5-205.
 - Time for payment, §3-5-208.

ALCOHOLIC BEVERAGES —Cont'd**Wine —Cont'd****Taxation —Cont'd**

Payment of tax, §3-7-502.

Penalty for failure to timely pay,
§3-7-504.

Penalties.

Noncompliance with subchapter,
§3-7-504.

Reports, §3-7-502.

Native wines generally, §3-7-506.

Penalty for failure to timely file
report, §3-7-504.

Rules and regulations.

Generally, §3-7-501.

Sacramental wine.

Exemption from taxes levied on
wine, §3-7-115.

Transportation.

Light wine, §3-5-217.

Bills of lading.

Duplicate bills, §3-5-218.

Vegetables imported for use in local
wines subject to tax, §3-5-605.

Wine producers council.

Appointment, §3-5-701.

Composition, §3-5-701.

Creation, §3-5-701.

Officers, §3-5-702.

Powers and duties.

Generally, §3-5-703.

Terms of office, §3-5-701.

Wine and beer on-premises licenses,

§§3-9-601 to 3-9-606.

Annual renewal, §3-9-602.

Corporate applicants, §3-9-603.

Definitions, §3-9-601.

Disciplinary action against licensee,
§3-9-606.

Issuance, §3-9-603.

Prohibited acts, §§3-9-604, 3-9-605.

Qualifications of applicants, §3-9-603.

Unlicensed sales, §§3-9-602, 3-9-605.

Wineries.

Defined, §3-5-202.

Incentive grants.

Agricultural marketing grants fund.

Establishment and use, §3-5-908.

Applications, §3-5-905.

Eligibility, §3-5-904.

Establishment of program, §3-5-901.

Fund.

Agricultural marketing grants
fund.

Establishment and use,
§3-5-908.

Legislative declaration.

Purpose of incentives, §3-5-902.

ALCOHOLIC BEVERAGES —Cont'd**Wineries —Cont'd****Incentive grants —Cont'd**

Payments, §3-5-907.

Amount, §3-5-907.

Program established, §3-5-901.

Purpose of incentives, §3-5-902.

Qualified wineries, §3-5-904.

Records, §3-5-906.

Rules and regulations.

Authority to establish, §3-5-903.

Witnesses.

Board of alcoholic beverage control.

Conducting or hearing appeals,
§3-2-215.

ALLIGATOR WEED.**Plant board.**

Agreements to hold United States free
from claims, §2-16-103.

ANIMALS.**Alpacas.**

Alternate livestock, §2-32-101.

Alternate livestock, §2-32-101.

Anthrax spore vaccine.

Sales.

Advice and consent of state
veterinarian, §2-40-108.

**Bees and honey, §§2-22-101 to
2-22-112.**

Boards and commissions.

Livestock and poultry commission,
§§2-33-101 to 2-33-401.

Brands and marks.

Livestock, §§2-34-101 to 2-34-213.

Carcasses.

Cremation of dead fowl, §§2-40-401 to
2-40-406.

Disposal of large animal carcasses,
§§2-40-1301 to 2-40-1305.

**Commercial feeds, §§2-37-101 to
2-37-114.**

Cremation.

Dead animals.

Fowl, §§2-40-401 to 2-40-406.

Dead bodies.

Cremation of dead fowl, §§2-40-401 to
2-40-406.

Disposal of large animal carcasses,
§§2-40-1301 to 2-40-1305.

Diagnostic testing.

Small animal diagnostic testing,
§2-33-112.

Diseases.

Bringing in diseased animal,
§2-40-101.

Canine brucellosis, §2-40-110.

ANIMALS —Cont'd**Diseases —Cont'd**

Expenses of enforcement of act,
§2-40-107.

Horses.

Equine infectious anemia,
§§2-40-801 to 2-40-829.

Owners of diseased animals.

Duties, §2-40-104.

Poultry flocks.

Destruction of diseased poultry
flocks, §2-40-109.

Drovers, §§2-34-301 to 2-34-304.**Emus.**

Alternate livestock, §2-32-101.

Equine infectious anemia, §§2-40-801 to 2-40-805.**Estrays.**

Livestock running at large, §§2-38-101 to 2-38-504.

Farm animals.**Livestock.**

Shows, §§2-36-101 to 2-36-306.

Fees.

Small animal diagnostic testing,
§2-33-112.

Fences.

General provisions, §§2-39-101 to 2-39-111.

Fowl.

Disposal of dead fowl, §§2-40-401 to 2-40-406.

Livestock and poultry commission,
§§2-33-101 to 2-33-401.

Funds.

Small animal diagnostic testing,
§2-33-112.

Guanacos.

Alternate livestock, §2-32-101.

Livestock.

Shows, §§2-36-101 to 2-36-306.

Llamas.

Alternate livestock, §2-32-101.

Ostriches.

Alternate livestock, §2-32-101.

Penalties.

Disposal of large animal carcasses.
Provision violations, §2-40-1303.

Quarantine.**Cattle.**

General provisions, §§2-40-1001 to 2-40-1006.

Rheas.

Alternate livestock, §2-32-101.

Rules and regulations.

Small animal diagnostic testing,
§2-33-112.

ANIMALS —Cont'd**Running at large.**

Feral hogs, §2-38-504.

Livestock, §§2-38-101 to 2-38-504.

Small animal diagnostic testing.

Fees, §2-33-112.

Fund.

Established, §2-33-112.

Rules and regulations, §2-33-112.

Tick control, §§2-40-901 to 2-40-906.**ANNEXATION.****Alcoholic beverages.**

Annexation of dry township into wet
city or town.

Local option election, §§3-8-501,
3-8-502.

ANSWERS.**Seeds.**

Arbitration of defective seed claims.

Answers to complaints against
dealer, §2-23-102.

ANTHEM OF STATE, §1-4-116.**ANTHRAX.****Vaccinations.**

Sale of vaccine, §2-40-108.

APPEALS.**Agriculture.**

Grading of products and containers.

Appeals from inspector's decision to
chief inspector, §2-20-114.

Alcoholic beverages.**Beer.****Retailers.**

Licenses, §3-5-306.

Board of alcoholic beverage control.

Conduct of appeal before board,
§3-2-215.

Licenses.

Denial, suspension or revocation.

Appeal or review by board,
§§3-2-213, 3-2-214.

Director of alcoholic beverage control division.

Orders suspending, revoking or
refusing license sent by
registered mail, §3-2-212.

Licenses.

Denial, suspension or revocation,
§3-2-216.

Board of alcoholic beverage
control.

Appeal to board, §3-2-213.

Review by board on own motion,
§3-2-214.

Local option elections.

1935 act proceedings.

Contests of elections, §3-8-309.

APPEALS —Cont'd**Alcoholic beverages —Cont'd**

Local option elections —Cont'd

Initiated act proceedings.

Calling of election, §3-8-205.

Permit applications, §3-4-213.

Wholesale dealers and distributors.

Request to change wholesalers,
§3-2-406.**Commercial feeds.**Acts, orders or rulings of plant board,
§2-37-113.**Nurseries.**

Licenses.

Denial, §2-21-110.

Invalidation, §2-21-111.

Pesticides.

Decisions of plant board, §2-16-408.

APPLE BLOSSOM.**State flower, §1-4-109.****APPLES.****Labeling of fruits and vegetables for
interstate shipment.**Products to which act applies,
§2-20-303.**APPRAISALS AND APPRAISERS.****Livestock.**

Certificate of appraisalment, §2-38-108.

APPROPRIATIONS.**Code revision commission.**Commission not to incur obligations
absent appropriated or available
funds, §1-2-304.**Livestock shows.**

Construction and operation, §2-36-206.

ARBITRATION.**Alcoholic beverages.**Wholesalers' protection from arbitrary
actions of suppliers.

Prohibited acts of supplier.

Compensation upon supplier's
violation, §3-5-1108.**Livestock or poultry production
contracts.**

Disputes, §2-32-201.

Seeds.Arbitration of defective seed claims,
§§2-23-101 to 2-23-110.**ARBOR DAY.****Commemoration on proclamation,
§1-5-106.****ARKANSAS AGRICULTURE****RECOGNITION DAY, §1-5-111.****ARKANSAS CATFISH PROMOTION****BOARD, §§2-9-101 to 2-9-112.****ARKANSAS CATFISH PROMOTION
FUND, §2-9-112.****ARKANSAS CODE REVISION
COMMISSION, §§1-2-301 to
1-2-304.****ARKANSAS CORN AND GRAIN
SORGHUM PROMOTION
BOARD, §§2-20-804 to 2-20-806.****ARKANSAS CROP AND RESEARCH
FACILITIES PROTECTION,
§2-15-101.****ARKANSAS DAIRY COMMITTEE,
§2-33-401.****ARKANSAS FEED LAW OF 1997,
§§2-37-101 to 2-37-114.****ARKANSAS-OKLAHOMA DISTRICT
FAIR AND LIVESTOCK SHOW,
§2-36-307.****ARKANSAS RICE CERTIFICATION
ACT, §§2-15-201 to 2-15-208.****ARREST.****Livestock and poultry commission.**

Livestock inspectors.

Powers to arrest, §2-33-108.

ASIAN PEOPLE.**Definition of minorities in Arkansas,
§§1-2-501 to 1-2-504.****ASSESSMENTS.****Boll weevil suppression and
eradication.**

Levied on cotton growers.

Basis, §2-16-614.

Exemptions, §2-16-617.

Referendum, §2-16-614.

Conduct, §2-16-615.

Subsequent referendums,
§2-16-616.**Cattle.**

Beef promotion and research.

General provisions, §§2-35-401 to
2-35-407.**Rice.**Research and promotion act,
§2-20-507.**Thistle control and eradication.**

Annual assessment, §2-16-801.

Wheat promotion act.

Grown wheat, §2-20-606.

Refunds to producers, §2-20-608.

ASSOCIATIONS.**Agricultural cooperative****associations, §§2-2-101 to 2-2-313.****Cooperative marketing associations,****§§2-2-401 to 2-2-430.**

ATTORNEY GENERAL.**Agriculture.**

Emergency plant act.

Duties of attorney general,
§2-16-304.**ATTORNEYS' FEES.****Agricultural operations.**

Proceeding to declare nuisance.

Awarding to prevailing party,
§2-4-107.**Alcoholic beverages.**Wholesalers' protection from arbitrary
actions of suppliers.

Civil action for violations, §3-5-1106.

**Livestock or poultry production
contracts.**

Civil action for violation, §2-32-201.

AUCTIONS AND AUCTIONEERS.**Alcoholic beverages.**

Wine.

Charitable auctions, §§3-5-1501 to
3-5-1507.**Charitable auctions.**

Wine, §§3-5-1501 to 3-5-1507.

Wine.Charitable auctions, §§3-5-1501 to
3-5-1507.**AUDITS AND AUDITORS.****Boll weevil suppression and
eradication.**

Assessments levied on cotton grower.

Annual audit, §2-16-614.

Cotton growers' organizations.

Books and records, §2-16-612.

Fertilizers.Right of plant board or agents,
§2-19-209.**Livestock shows.**

Associations, §2-36-210.

B**BAIT.****Commercial bait and ornamental
fish act, §§2-5-201 to 2-5-208.****BANKRUPTCY AND INSOLVENCY.****Grain.**

Public grain warehouses.

Duty of commissioner upon
bankruptcy of warehouseman,
§2-17-236.**BAUXITE.**

State rock, §1-4-111.

BEEF COUNCIL.General provisions, §§2-35-301 to
2-35-310.**BEEF PROMOTION AND**RESEARCH, §§2-35-401 to
2-35-407.**BEEES AND HONEY.****Abandonment.**

Abandoned apiary.

Defined, §2-22-101.

**Administration of provisions,
§2-22-104.****Apiaries.**

Abandoned apiary.

Defined, §2-22-101.

Defined, §2-22-101.

Equipment.

Defined, §2-22-101.

Inspections, §2-22-107.

Powers of inspectors, §2-22-106.

Standards for inspectors, §2-22-108.

Quarantine, §2-22-112.

Appliances.

Defined, §2-22-101.

Certificate of health.

Bees brought into state, §2-22-111.

Sales.

Copy of certificate to be given by
seller, §2-22-103.Requirement of certificate,
§2-22-103.**Definitions, §2-22-101.****Diseases.**

Defined, §2-22-101.

Duties of persons engaged in
beekeeping upon detection of
disease, §2-22-109.

Quarantine, §2-22-112.

**Duties of persons engaged in
beekeeping, §2-22-109.****Enforcement of provisions, §2-22-106.****Hives.**

Defined, §2-22-101.

Inspections.

Apiaries, §2-22-107.

Powers of inspectors, §2-22-106.

Standards for inspectors, §2-22-108.

Nonresidents.

Registration, §2-22-110.

Notice.

Transporting of bees.

Plant board to be notified, §2-22-111.

Nucleus.

Defined, §2-22-101.

Packages.

Defined, §2-22-101.

Plant board.Administration of provisions,
§2-22-104.

Application for registration, §2-22-110.

BEEES AND HONEY —Cont'd**Plant board —Cont'd**

Director.

Defined, §2-22-101.

Rules and regulations, §2-22-105.

Transporting bees.

Notice to board, §2-22-111.

Pollination.

Defined, §2-22-101.

Quarantine, §2-22-112.**Registration.**

Nonresidents, §2-22-110.

Required, §2-22-110.

Rules and regulations.

Plant board, §2-22-105.

Sales.

Certificate of health.

Copy of certificate to be given by seller, §2-22-103.

Requirement of certificate, §2-22-103.

Section head.

Defined, §2-22-101.

Transporting of bees, §2-22-111.**Violations of provisions.**

Misdemeanors, §2-22-102.

Prohibited acts, §2-22-103.

BILLS OF SALE.**Livestock sales.**

Bill of sale required, §2-35-212.

BIOTECHNOLOGY DEVELOPMENT AND TRAINING, §§2-8-101 to 2-8-109.**BIRDS.****Purple martin capitals.**

Designation, §1-4-121.

State bird.

Designation, §1-4-118.

BLIND PERSONS.**White cane safety day.**

Governor's proclamation regarding, §1-5-108.

BOARDS AND COMMISSIONS.**Catfish promotion board, §§2-9-101 to 2-9-112.****Code revision commission, §§1-2-301 to 1-2-304.****Corn and grain sorghum promotion board, §§2-20-804 to 2-20-806.****Fairs.**

Northeast Arkansas district fair advisory board, §2-36-302.

Fire and advisory board, §§2-16-701 to 2-16-705.

Chairpersons, §2-16-703.

Creation, §2-16-701.

BOARDS AND COMMISSIONS

—Cont'd

Fire and advisory board —Cont'd

Meetings, §2-16-703.

Members, §2-16-702.

Regulations, §2-16-704.

Reports, §2-16-705.

Livestock and poultry commission, §§2-33-101 to 2-33-401.**Milk stabilization board, §§2-10-101 to 2-10-104.****Poultry.**

Livestock and poultry commission, §§2-33-101 to 2-33-401.

Uniform laws.

Commission on uniform state laws, §§1-2-401 to 1-2-403.

BOLL WEEVIL SUPPRESSION AND ERADICATION, §§2-16-601 to 2-16-617.**Assessments.**

Levied on cotton grower.

Basis, §2-16-614.

Exemptions, §2-16-617.

Failure to pay, §2-16-617.

Referendum, §2-16-614.

Conduct, §2-16-615.

Subsequent referendums, §2-16-616.

Audits and auditors.

Assessments levied on cotton grower.

Annual audit, §2-16-614.

Cotton growers' organizations.

Books and records, §2-16-612.

Bond issues.

Cotton growers' organizations, §2-16-612.

Bonds, surety.

Cotton growers' organizations.

Employees or agents handling funds, §2-16-612.

Certificates of compliance, §2-16-617.**Certification of cotton growers' organizations, §§2-16-612, 2-16-613.**

Eligibility, §2-16-612.

Revocation, §2-16-613.

Citation of subchapter, §2-16-601.**Construction and interpretation.**

Liberal construction, §2-16-602.

Cooperative programs authorized, §2-16-606.**Cotton growers' organizations, §2-16-612.**

Assessments, §2-16-614.

Referendum, §2-16-614.

Conduct, §2-16-615.

BOLL WEEVIL SUPPRESSION AND ERADICATION —Cont'd

Cotton growers' organizations —Cont'd

Assessments —Cont'd
 Referendum —Cont'd
 Subsequent referendums,
 §2-16-616.

Board of directors, §2-16-612.

Bond issues, §2-16-612.

Bonds, surety.

 Employees or agents handling funds,
 §2-16-612.

Certification, §§2-16-612, 2-16-613.

Loans, §2-16-612.

Records.

 Availability for inspection or audit
 by plant board, §2-16-612.

Referendum.

 Assessments, §2-16-614.

 Conduct, §2-16-615.

 Subsequent referendums,
 §2-16-616.

Counterfeiting.

Certificates, permits or other
 documents provided in
 subchapter, §2-16-604.

Criminal penalties, §2-16-604.

Declaration of policy, §2-16-602.

Definitions, §2-16-603.

Destruction of cotton.

Assessments.

 Failure to pay, §2-16-617.

Eradication zones.

 Grower failing to meet
 requirements, §2-16-610.

 Noncommercial or volunteer cotton,
 §2-16-611.

Eradication zones.

Areas where cotton cannot be planted,
 §2-16-610.

Commercial cotton growers.

 Participation in program, §2-16-610.

Designation, §2-16-610.

Destruction of cotton.

 Grower failing to meet
 requirements, §2-16-610.

 Noncommercial or volunteer cotton,
 §2-16-611.

Noncommercial cotton.

 Destruction or treatment, §2-16-611.

 Prohibiting planting, §2-16-610.

Penalties, §2-16-610.

Treatment of cotton.

 Noncommercial or volunteer cotton,
 §2-16-611.

Volunteer cotton.

 Destruction or treatment, §2-16-611.

BOLL WEEVIL SUPPRESSION AND ERADICATION —Cont'd

Exemptions from assessment, §2-16-617.

Forgery.

Certificates, permits or other
 documents provided in
 subchapter, §2-16-604.

Initiative and referendum.

Assessment levied upon cotton
 growers.

Conduct, §2-16-615.

Referendum, §2-16-614.

Subsequent referendums, §2-16-616.

Injunctions.

Destruction of cotton.

Failure to pay assessments.

 Cotton not destroyed, §2-16-617.

Inspections.

Authority of plant board, §2-16-607.

Cotton growers' organizations.

Books and records, §2-16-612.

Liens.

Failure to pay assessments, §2-16-617.

Loans.

Cotton growers' organizations,
 §2-16-612.

Noncommercial cotton.

Eradication zones.

Destruction or treatment, §2-16-611.

Prohibition.

 On growing, §2-16-610.

Notice.

Eradication zones.

Noncommercial cotton prohibition
 and requirement of commercial
 cotton grower participation,
 §2-16-610.

Nuisances.

Failure to pay assessments.

Destruction of cotton.

 Cotton not destroyed deemed
 public nuisance, §2-16-617.

Penalties.

Assessments.

 Failure to pay, §2-16-617.

Criminal penalties, §2-16-604.

Eradication zones, §2-16-610.

Petitions.

Failure to pay assessments.

Destruction of cotton.

 Cotton not destroyed deemed
 public nuisance.

 Petition to condemn and destroy
 cotton, §2-16-617.

Plant board.

Cooperative programs.

Authorized, §2-16-606.

BOLL WEEVIL SUPPRESSION AND ERADICATION —Cont'd

Plant board —Cont'd

Defined, §2-16-603.

Entry of premises, §2-16-607.

Eradication zones.

Designation, §2-16-610.

Destruction or treatment.

Noncommercial or volunteer
cotton, §2-16-611.

Inspections, §2-16-607.

Quarantine, §2-16-609.

Reports.

Furnished to plant board, §2-16-608.

Rules promulgation, §2-16-605.

Publication.

Eradication zones.

Noncommercial cotton prohibition
and requirement of commercial
cotton grower participation,
§2-16-610.

Purposes of subchapter, §2-16-602.

Quarantine, §2-16-609.

Records.

Cotton growers' organizations.

Availability for inspection or audit,
§2-16-612.

Regulated articles.

Defined, §2-16-603.

Moving infested regulated articles into
state, §2-16-604.

Reports.

Furnishing to plant board, §2-16-608.

Right of entry.

Plant board, §2-16-607.

Rules and regulations.

Promulgation, §2-16-605.

Quarantine, §2-16-609.

Violations.

Criminal penalties, §2-16-604.

Title of subchapter, §2-16-601.

Treatment of cotton.

Eradication zones.

Noncommercial or volunteer cotton,
§2-16-611.

Undue financial hardship

exemptions from assessments,
§2-16-617.

Violations of subchapter.

Criminal penalties, §2-16-604.

Volunteer cotton.

Eradication zones.

Destruction or treatment, §2-16-611.

Warrants.

Right of entry.

Issuance by judge, §2-16-607.

BOND ISSUES.

Boll weevil suppression and eradication.

Cotton growers' organizations,
§2-16-612.

BONDS, SURETY.

Agriculture.

Grading of products and containers.

Inspectors and employees, §2-20-110.

Plant board.

Director, §2-16-208.

Alcoholic beverages.

Free trade among small wineries.

Bond of winery, §3-5-1608.

Local option elections.

1935 act proceedings.

Multiple violations, §3-8-314.

Multiple offenses.

Bonds for good behavior, §3-3-103.

Boll weevil suppression eradication.

Cotton growers' organizations.

Employees or agents handling funds,
§2-16-612.

Catfish processor fair practices.

Purchase methods, §2-6-107.

Livestock.

Running at large.

Bond of taker-up, §2-38-109.

Record of bond of taker-up,
§2-38-110.

Livestock and poultry commission.

Executive director, §2-33-104.

State veterinarian, §2-33-105.

Livestock shows.

Executive officer, §2-36-208.

Amount of bond, §2-36-209.

Poultry.

Nonresident commercial poultry
buyers, §2-35-213.

Insuring payment of poultry
purchase, §2-35-213.

Purchase without bond, §2-35-213.

BOOTLEGGING.

Alcoholic beverages.

Illicit manufacture and equipment,
§§3-3-401 to 3-3-405.

BOUNDARIES.

State of Arkansas.

Extension of western boundary line,
§1-1-101.

BRANDS.

Fertilizers.

Registration, §2-19-202.

Funds.

Brand registry fund.

Created, §2-34-213.

BRANDS —Cont'd**Soil amendment.**

Misbranding defined, §2-19-402.

BRANDY.

Alcoholic beverages, §§3-6-101 to 3-6-106.

BRIBERY.**Agriculture.**

Grading of products and containers.

Influencing inspector, §2-20-111.

Alcoholic beverages.

Board of alcoholic beverage control.

Solicitation or acceptance of bribe prohibited, §3-2-208.

Division of alcoholic beverage control.

Solicitation or acceptance of bribe prohibited, §3-2-208.

Enforcement division of alcoholic beverage control.

Solicitation or acceptance of bribe prohibited, §3-2-208.

BRUCELLOSIS.**Calves.**

Vaccination.

Brucellosis indemnities, §2-40-507.

Brucellosis vaccination program, §2-40-502.

Calves vaccinated before leaving market, §2-40-502.

Cooperative agreements with United States department of agriculture, §2-40-506.

Identification of vaccinated calves, §2-40-502.

Inspections.

Right of entry, §2-40-505.

Misdemeanors.

Violations a misdemeanor, §2-40-501.

Refusal to vaccinate calves, §2-40-504.

Removing or simulating official marks, §2-40-504.

Rules and regulations.

Promulgation by commission, §2-40-505.

Vaccine used, §2-40-503.

Veterinarians.

Commission to employ veterinarians or agents, §2-40-505.

Violations.

Misdemeanors, §2-40-501.

Canine brucellosis, §2-40-110.

Control and eradication, §2-40-210.

Control areas.

Certification, §2-40-601.

BRUCELLOSIS —Cont'd**Counties.**

Modified certified brucellosis free areas.

Action to qualify county as certified area, §2-40-602.

Criminal offenses, §2-40-210.

Fees.

Vaccination.

Funding of brucellosis program, §2-40-206.

Hearings.

Depopulation of herds, §2-40-210.

Indemnities.

Payment by commission, §2-40-507.

Legislative intent, §2-40-508.

Livestock and poultry commission.

Control and eradication of brucellosis, §2-40-210.

Depopulation, negotiation and hearing procedures.

Adoption of rules and regulations, §2-40-210.

Legislative intent, §2-40-508.

Modified certified brucellosis free areas.

Rules and regulations of commission, §2-40-603.

Payment of indemnities, §2-40-507.

Vaccination of calves.

Employment of veterinarians or agents, §2-40-505.

Rules and regulations of commission, §2-40-505.

Modified certified brucellosis free areas.

Action to qualify counties, §2-40-602.

Petition, §2-40-601.

Requirements for certification, §2-40-602.

Rules and regulations of commission, §2-40-603.

Notice.

Eradication of herds identified with brucellosis, §2-40-210.

Petitions.

Modified certified brucellosis free areas, §2-40-601.

Rules and regulations.

Depopulation, negotiation and hearing procedures.

Livestock and poultry commission, §2-40-210.

Modified certified brucellosis free areas.

Livestock and poultry commission rules and regulations, §2-40-603.

BRUCELLOSIS —Cont'd**State veterinarian.**

Depopulation of herds, §2-40-210.

Vaccination.

Calves vaccinated before leaving market, §2-40-502.

Cooperative agreements with United States department of agriculture, §2-40-506.

Fees.

Funding of brucellosis program, §2-40-206.

Female calves, §2-40-502.

Identification of vaccinated calves, §2-40-502.

Inspections.

Authority to enter premises, §2-40-505.

Misdemeanors.

Violations of act, §2-40-501.

Refusal to vaccinate calves, §2-40-504.

Removal or simulating official marks, §2-40-504.

Rules and regulations.

Promulgation by commission, §2-40-505.

Vaccine used, §2-40-503.

Veterinarians.

Commission to employ veterinarians or agents, §2-40-505.

Violations.

Misdemeanors, §2-40-501.

BUDGETS.**Catfish promotion board.**

Annual submission, §2-9-108.

BURDEN OF PROOF.**Alcoholic beverages.**

Privilege license holders.

Violations, §3-3-218.

Registration of still or apparatus, §3-3-401.

BUREAU OF LEGISLATIVE RESEARCH.**Code revision commission.**

Transfer of commission property, personal records and unexpended allocations to bureau, §1-2-303.

Code revisor.

Employment by bureau, §1-2-302.

Executive director of code revision commission to become, §1-2-303.

Employees of code revision commission.

Transferred to bureau, §1-2-303.

BUTTERFLY OF STATE, §1-4-126.**C****CALCIUM.**

Labeling requirements, §2-19-303.

CANINE BRUCELLOSIS, §2-40-110.

CARRIERS.**Cattle.**

Transfer record.

Receiving without copy, §2-35-209.

Goats.

Transfer record.

Receiving without copy of transfer record, §2-35-209.

Hogs.

Transfer record.

Receiving without copy, §2-35-209.

Horses.

Transfer record.

Receiving without copy, §2-35-209.

Livestock.

Transfer record.

Receiving livestock without copy, §2-35-209.

Sheep.

Transfer record.

Receiving without copy, §2-35-209.

CATFISH MARKETING.

Catfish promotion board, §§2-9-101 to 2-9-112.

CATFISH PROCESSOR FAIR PRACTICES.

Administration of chapter, §2-6-104.

Bonds, surety.

Purchase methods, §2-6-107.

Capable of use as human food.

Defined, §2-6-103.

Cash sale.

Defined, §2-6-103.

Catfish.

Defined, §2-6-103.

Citation of chapter, §2-6-101.

Damages.

Unlawful practices, §2-6-106.

Definitions, §2-6-103.

Delays in payment.

Unfair practices, §2-6-107.

Direct retail sale.

Defined, §2-6-103.

Fees.

Registration, §2-6-105.

Injunctions, §2-6-106.

Legislative declaration and intent.

Purpose of chapter, §2-6-102.

Payment delays.

Unfair practices, §2-6-107.

CATFISH PROCESSOR FAIR PRACTICES —Cont'd

Penalties.

Unlawful practices, §2-6-106.

Plant board.

Administration of chapter, §2-6-104.

Definition of "board," §2-6-103.

Injunctions.

Authority to seek, §2-6-106.

Rules and regulations.

Authority to promulgate, §2-6-104.

Processor.

Defined, §2-6-103.

Producer.

Defined, §2-6-103.

Product.

Defined, §2-6-103.

Prohibited practices, §2-6-106.

Purchase methods, §2-6-107.

Purpose of chapter, §2-6-102.

Receivership, §§2-6-109 to 2-6-123.

Administrative procedures.

Applicability, §2-6-115.

Assets.

Preservation and protection,
§2-6-109.

Bonds, surety, §2-6-116.

Distribution of proceeds, §2-6-122.

Claims filing deadline.

Notice, §2-6-117.

Designees of director, §2-6-114.

Distribution of catfish to producers,
§2-6-119.

Duties of director, §2-6-114.

Notice.

Claims filing deadline, §2-6-117.

Plan for disposition of catfish.

Hearings on plan, §2-6-111.

Publication, §2-6-113.

Weighing of ticketholders, §2-6-112.

Operation of business.

Continued operation, §2-6-120.

Petition, §2-6-109.

Plan for disposition of catfish,
§2-6-110.

Distribution to producers, §2-6-119.

Hearings on plan, §2-6-111.

Reimbursement of director, §2-6-121.

Reports.

Final report, §2-6-123.

Sale of processed catfish, §2-6-118.

Distribution of proceeds, §2-6-122.

Service.

Plan for disposition of catfish.

Notice of hearing on plan,
§2-6-111.

Registration.

Applications, §2-6-105.

CATFISH PROCESSOR FAIR PRACTICES —Cont'd

Registration —Cont'd

Fees, §2-6-105.

Processors, §2-6-105.

Remedies.

Additional nature of remedies for
violations of chapter, §2-6-106.

Rules and regulations.

Plant board.

Authority to promulgate rules and
regulations, §2-6-104.

Sales.

Cash sale.

Defined, §2-6-103.

Direct retail sale.

Defined, §2-6-103.

Methods of purchase, §2-6-107.

**Scales used to weigh catfish and
foreign materials,** §2-6-107.

Secured party.

Defined, §2-6-103.

State plant board.

Purchase methods.

Enforcement of section, §2-6-107.

Suspension.

Registrant processors, §2-6-105.

Exception, §2-6-105.

Title of chapter, §2-6-101.

Unlawful practices, §2-6-106.

Delays in payment, §2-6-107.

Weights and measures.

Weighing catfish at time of delivery to
processor, §2-6-107.

Scales used to weigh, §2-6-107.

CATFISH PROMOTION BOARD, §§2-9-101 to 2-9-112.

Arkansas catfish promotion fund, §2-9-112.

Assessments.

Application of funds, §2-9-105.

Collection agency, §2-9-107.

Collection violations, §2-9-111.

Continuing assessment until
terminated, §2-9-107.

Election vote on levy of assessment,
§2-9-107.

Imposition, §2-9-103.

Penalties for noncompliance, §2-9-111.

Recordkeeping requirements, §2-9-109.

Refund claim form, §2-9-110.

Reporting and remittance violations,
§2-9-111.

Use of funds, §2-9-104.

Audits.

Annual agency audit, §2-9-107.

Budget.

Annual preparation, §2-9-107.

CATFISH PROMOTION BOARD

—Cont'd

Commercial catfish processors.

Defined, §2-9-102.

Election vote on levy of assessment,
§2-9-107.One percent remittance deduction,
§2-9-107.

Recordkeeping requirements, §2-9-109.

Registered ballots, §2-9-106.

Resubmission for vote upon
disapproval, §2-9-107.

Voter referenda, §2-9-106.

Composition, §2-9-103.**Definitions,** §2-9-102.**Executive directors.**

Salary provision, §2-9-103.

Nomination, §2-9-103.**Powers and duties,** §2-9-104.**Principal office location,** §2-9-103.**Public policy,** §2-9-101.**Removal,** §2-9-103.**Residency requirement,** §2-9-103.**Rulemaking authority,** §2-9-104.**Term of office,** §2-9-103.**Vacancies,** §2-9-103.**Voter referenda,** §2-9-106.**CATS.****Commercial feeds,** §§2-37-101 to
2-37-114.**Diagnostic testing.**Small animal diagnostic testing,
§2-33-112.**Diseases.**Bringing in diseased animal,
§2-40-101.

Duties of owner, §2-40-104.

Feed.Commercial feeds, §§2-37-101 to
2-37-114.**Small animal diagnostic testing,**
§2-33-112.**CATTLE.****Accounts and accounting.**

Beef promotion and research.

National beef promotion account.

Creation of account, §2-35-406.

State beef promotion account.

Creation of account, §2-35-407.

National beef promotion account.

Creation, §2-35-406.

Anthrax spore vaccine.

Sale.

Advice and consent of state
veterinarian, §2-40-108.**Arkansas beef council,** §§2-35-301 to
2-35-310.**CATTLE —Cont'd****Assessments.**

Beef promotion and research.

General provisions, §§2-35-401 to
2-35-407.**Beef council.**

Appointment of members, §2-35-303.

Assessments.

Applicability, §2-35-304.

Beef promotion and research.

General provisions, §§2-35-401 to
2-35-407.Collection of assessment by
purchasers, §2-35-305.

Disposition, §2-35-308.

Duration, §2-35-304.

Election on levy of assessment on
cattle, §2-35-304.Penalty for failure to pay
assessments, §2-35-302.

Petition to discontinue, §2-35-304.

Reports, §2-35-306.

Rules and regulations regarding
reporting and remittance of
assessments, §2-35-306.Collection of assessment by purchaser,
§2-35-305.

Commissioner of revenues.

Inspection of records and
regulations, §2-35-307.

Penalties.

Collection of penalties levied,
§2-35-302.Rules and regulations regarding
records, §2-35-306.

Created, §2-35-303.

Election of members, §2-35-303.

Fund.

Created, §2-35-308.

National beef promotion account.

Creation of account in fund,
§2-35-406.

State beef promotion account.

Creation of account in fund,
§2-35-407.Use of funds to enhance cattle
industry, §2-35-309.

Inspections.

Records, §2-35-307.

Reports.

Buyers' reports, §2-35-307.

Levy.

Election on levy of assessment on
cattle, §2-35-304.

Meetings, §2-35-303.

Officers, §2-35-303.

Penalties.

Disposition, §2-35-308.

CATTLE —Cont'd**Beef council —Cont'd**

Penalties —Cont'd

Failure to allow inspection of records, §2-35-302.

Failure to report or pay assessments, §2-35-302.

Petitions.

Discontinuing assessments, §2-35-304.

Producers.

Refunds to producers, §2-35-310.

Program to enhance cattle industry.

Use of funds, §2-35-309.

Promotion of growth and development of beef cattle industry.

Purpose of act, §2-35-301.

Purchasers.

Collection of assessment by purchasers, §2-35-305.

Defined, §2-35-305.

Purpose of act, §2-35-301.

Records.

Inspection of records, §2-35-307.

Rules and regulations, §2-35-306.

Refunds to cattle producers, §2-35-310.

Reports.

Penalty for failure to report, §2-35-302.

Rules and regulations governing records, §2-35-306.

Terms of members, §2-35-303.

Vacancies, §2-35-303.

Beef promotion and research.

Accounts and accounting.

National beef promotion account.

Creation of account, §2-35-406.

State beef promotion account.

Creation of account, §2-35-407.

Applicability of subchapter, §2-35-402.

Assessments.

Generally, §2-35-403.

Beef council fund.

National beef promotion account.

Creation in fund, §2-35-406.

State beef promotion account.

Creation of account in fund, §2-35-407.

Conduct of program, §2-35-403.

Construction and interpretation.

Applicability of subchapter, §2-35-402.

Funds.

Beef council fund.

National beef promotion account.

Creation of account in fund, §2-35-406.

CATTLE —Cont'd**Beef promotion and research**

—Cont'd

Funds —Cont'd

Beef council fund —Cont'd

State beef promotion account.

Creation of account in fund, §2-35-407.

Disposition of funds, §2-35-405.

Legislative declaration.

Purpose of subchapter, §2-35-401.

National beef promotion account.

Creation, §2-35-406.

Purpose of subchapter, §2-35-401.

Records, §2-35-403.

Rules and regulations.

Authority of director to adopt, §2-35-404.

State beef promotion account.

Creation, §2-35-407.

Brands and marks.

General provisions, §§2-34-101 to 2-34-213.

Carriers.

Transfer record.

Receiving without copy, §2-35-209.

Commercial feeds, §§2-37-101 to 2-37-114.**Drovers, §§2-34-301 to 2-34-304.****Elections.**

Beef council.

Election on levy of assessment on cattle, §2-35-304.

Estrays.

General provisions, §§2-38-101 to 2-38-408.

Fees.

Pseudorabies control and eradication program funding, §2-40-1201.

Fences.

General provisions, §§2-39-101 to 2-39-111.

Funds.

Beef promotion and research.

Beef council fund.

National beef promotion account.

Creation of account in fund, §2-35-406.

State beef promotion account.

Creation of account in fund, §2-35-407.

Disposition of funds, §2-35-405.

Guardians.

Brands of minors owning cattle separate from guardian, §2-34-103.

CATTLE —Cont'd**Impoundment.****Quarantine.**

Impounding stock across quarantine line, §2-40-1005.

Inspections.**Beef council.**

Inspection of records and regulations, §2-35-307.

Interstate commerce.

Federal regulations exclusively govern interstate movement, §2-35-214.

Interstate shipping points, §2-35-215.

Livestock shows, §§2-36-101 to 2-36-306.**Minors.****Brands and marks.**

Minors owning cattle separate from father or guardian, §2-34-103.

Peace officers.**Quarantine.**

Enforcing quarantine regulations, §2-40-1005.

Penalties.**Beef council.**

Disposition of penalties and assessments, §2-35-308.

Transfer record.

Violations of act, §2-35-203.

Perjury.**Transfer records.**

Law of perjury applicable, §2-35-207.

Quarantine.

Enforcement of quarantine regulations.

Peace officers to enforce, §2-40-1005.

Governor.

Changes in quarantine line.

Submission to governor, §2-40-1003.

Jurisdiction.

Jurisdiction over violation, §2-40-1002.

Transporting cattle across lines, §2-40-1002.

Penalties.

Driving cattle across state lines, §2-40-1004.

State quarantine line.

Permitting cattle to cross, §2-40-1004.

Transporting cattle across quarantine lines, §2-40-1002.

Railroads.**Excreta.**

Throwing excreta or other refuse, §2-40-1006.

CATTLE —Cont'd**Quarantine —Cont'd****Railroads —Cont'd****Rights of way.**

Fencing, §2-40-1006.

Transporting cattle through state, §2-40-1003.

Unloading cattle beyond line, §2-40-1006.

State quarantine line.**Animals drifting across.**

Other persons not to permit, §2-40-1004.

Penalty, §2-40-1001.

Changes, §2-40-1003.

Driving stock back across line.

Duty of officer, §2-40-1005.

Penalty, §2-40-1004.

Established, §2-40-1003.

Impounding stock across line, §2-40-1005.

Penalties.

Permitting cattle to cross, §2-40-1004.

Permitting cattle to cross, §2-40-1004.

Railroads.

Transporting cattle through state, §2-40-1003.

Unloading cattle beyond lines, §2-40-1006.

Resident owners.

Not to permit animals to drift across, §2-40-1001.

Transporting cattle across quarantine lines, §2-40-1002.

Jurisdiction of violations, §2-40-1002.

Preventing transportation across line.

Recovery of expenses, §2-40-1002.

United States quarantine lines.

Driving or transporting cattle across unlawful, §2-40-1002.

Jurisdiction over violations, §2-40-1002.

Penalty for violations, §2-40-1002.

Preventing transportation across line.

Recovery of expenses, §2-40-1002.

Rabies.

Pseudorabies control and eradication program.

Levy of fees to fund, §2-40-1201.

Vaccination.

Cost of vaccine, §2-40-1101.

CATTLE —Cont'd**Railroads.**

Quarantine.

Excreta.

Throwing excreta or other refuse,
§2-40-1006.

Fencing right of way, §2-40-1006.

Transporting cattle through state
permitted, §2-40-1003.Unloading cattle beyond quarantine
line, §2-40-1006.**Records.**Beef promotion and research,
§2-35-403.

Stockyards, §2-35-211.

Transportation.

One county to another, §2-35-204.

Reports.

Beef council.

Assessments, §2-35-306.

Rules and regulations.

Beef council.

Promulgation of rules and
regulations governing records.Reports and remittances of
assessments, §2-35-306.

Beef promotion and research.

Authority of director to adopt
appropriate rules and
regulations, §2-35-404.**Running at large, §§2-38-101 to
2-38-408.****Sales.**

Bill of sale.

Required, §2-35-212.

Shows.Livestock shows, §§2-36-101 to
2-36-306.**Slaughter.**

Sales for slaughter.

Bill of sale required, §2-35-212.

Stockyards.

Records.

Receiving livestock without copy of
transfer record, §2-35-209.

Required, §2-35-211.

Tick control, §§2-40-901 to 2-40-906.**Transportation.**

One county to another.

Records, §2-35-204.

Transfer records.

Animals named in act include those
dead or alive, §2-35-201.

Contents, §2-35-204.

Copies filed with clerk, §2-35-208.

Filing with person taking
acknowledgments, §2-35-208.

Form, §2-35-205.

CATTLE —Cont'd**Transportation —Cont'd**

Transfer records —Cont'd

Inspection, §2-35-210.

Perjury.

Law applicable, §2-35-207.

Persons taking acknowledgment.

Fees, §2-35-208.

Receiving livestock without copy of
record, §2-35-209.

Verification, §2-35-206.

Violations.

Penalty, §2-35-203.

CEDAR TREES.**Compensation for trees destroyed,**

§2-16-101.

Presentation of claims to county court,
§2-16-101.**CENSUS.****Northeast Arkansas district fair
advisory board.**Reapportionment of board after
census, §2-36-302.**CHARITABLE ORGANIZATIONS.****Native breweries providing
beverages, §3-5-1405.****CHARITIES.****Alcoholic beverages.**

Permitted premises.

Gambling devices, gaming devices or
slot machines kept on.

Restrictions, §3-9-236.

Wine.

Charitable auctions, §§3-5-1501 to
3-5-1507.**Gambling devices, gaming devices
or slot machines kept on.**Alcoholic beverage permitted premises,
§3-9-236.**Wine.**Charitable auctions, §§3-5-1501 to
3-5-1507.**CHICOT COUNTY.****City of Lake Village.**Southeast purple martin capital of the
state.

Designation, §1-4-121.

CHRISTMAS DAY.**Alcoholic beverages.**

Sale of intoxicating liquor on

Christmas prohibited, §3-3-211.

Official holiday, §1-5-101.**CHRISTMAS EVE.****Official holiday, §1-5-101.**

CHURCHES.**Alcoholic beverages.**

Retail liquor business.

Operation of business within certain distance of church.

Prohibited, §3-4-206.

Wine.

Sacramental wine, §3-7-115.

CIDER.**Alcoholic beverages.**

Exempted, §3-1-103.

CIRCUIT COURTS.**Alcoholic beverages.**

Enforcement of liquor laws.

Impeachment of circuit judge, §3-2-302.

Responsibility of circuit judge, §3-2-301.

Impeachment.

Alcoholic beverages.

Enforcement of liquor laws, §3-2-302.

Judges.

Alcoholic beverages.

Enforcement of liquor laws.

Impeachment of circuit judge, §3-2-302.

Responsibility of circuit judge, §3-2-301.

Statutes.

Construction of statute by circuit court.

Effect, §1-2-206.

CLAIMS.**Agriculture.**

Claims committee, §2-16-309.

Emergency plant act, §2-16-309.

Seeds.

Arbitration of defective seed claims, §§2-23-101 to 2-23-110.

Soil amendment.

Plant board may require proof of claims, §2-19-407.

Trees and timber.

Compensation for trees destroyed, §2-16-101.

CLUBS.**Alcoholic beverages.**

Private clubs, §§3-9-221 to 3-9-229.

CODE REVISION COMMISSION.**Appropriations.**

Commission not to incur obligations absent appropriated or available funds, §1-2-304.

CODE REVISION COMMISSION

—Cont'd

Bureau of legislative research.

Transfer of commission property, personnel, records and unexpended allocations to, §1-2-303.

Chairman, §1-2-301.

Code revisor.

Employment by bureau of legislative research, advice of commission, interview of applicants, §1-2-302.

Executive director of code revision commission to become, §1-2-303.

Compensation, §1-2-301.

Composition, §1-2-301.

Creation, §1-2-301.

Employees transferred to bureau of legislative research, §1-2-303.

Expenses.

Reimbursement, §1-2-301.

Fund.

Commission not to incur obligations absent appropriated or available funds, §1-2-304.

Members, §1-2-301.

Obligations.

Commission not to incur obligations absent appropriated or available funds, §1-2-304.

Retention of powers, duties and functions, §1-2-303.

Terms of members, §1-2-301.

Vacancies, §1-2-301.

CODE REVISOR.

Employment by bureau of legislative research, advice of commission, interview of applicants, §1-2-302.

Executive director of code revision commission to become, §1-2-303.

COLUMBUS DAY.

Commemoration on proclamation, §1-5-106.

COMMERCIAL BAIT AND ORNAMENTAL FISH ACT,
§§2-5-201 to 2-5-208.

COMMERCIAL FEEDS.

Adulteration, §2-37-107.

Prohibited acts, §2-37-108.

Appeals.

Acts, orders or rulings of plant board, §2-37-113.

Citation of act, §2-37-101.

Definitions, §2-37-103.

Detained commercial feeds, §2-37-112.

COMMERCIAL FEEDS —Cont'd**Inspections**, §2-37-111.

Fees, §2-37-109.

Labels, §2-37-105.

Misbranding, §2-37-106.

Prohibited acts, §2-37-108.

Licenses, §2-37-104.**Misbranding**, §2-37-106.

Prohibited acts, §2-37-108.

Notice.

Inspections, §2-37-111.

Penalties, §2-37-113.**Prohibited acts**, §2-37-108.**Records**, §2-37-109.**Registration**, §2-37-104.

Failure or refusal to register.

Prohibited acts, §2-37-108.

Rules and regulations, §2-37-110.**Sampling and analysis**, §2-37-111.**Searches and seizures.**Condemnation and confiscation,
§2-37-112.**State plant board.**Administration of provisions,
§2-37-102.Cooperation with other entities,
§2-37-114.

Definition of "board," §2-37-103.

Judicial review of board, §2-37-113.

Regulations, §2-37-110.

Withdrawal from distribution orders,
§§2-37-112, 2-37-113.**Title of act**, §2-37-101.**COMMERCIAL FERTILIZERS,**

§§2-19-201 to 2-19-212.

COMMON CARRIERS.**Livestock.**

Transfer records, §2-35-209.

COMPLAINTS.**Seeds.**

Arbitration of defective seed claims.

Complaints against dealers.

Filing fee, §2-23-102.

Prerequisite to legal action,
§2-23-102.Compliance with section not
required where notice not
typed on container or label,
§2-23-102.**COMPOST.****Natural organic fertilizers,**

§§2-19-501 to 2-19-503.

CONCERTS.**Beer festival permits**, §3-5-105.**CONFEDERATE FLAG DAY.****Generally**, §1-5-107.**CONFIDENTIALITY OF
INFORMATION.****Agriculture.**

Farm mediation.

Disclosure of information, §2-7-202.

Alcoholic beverages.

Nonresident beer sellers,

investigations, §3-5-1309.

Private clubs, names of members,
§3-9-232.**CONFLICT OF LAWS.****Alcoholic beverages.**

Microbrewery-restaurants.

Effect on other laws, §3-5-1203.

Cooperative marketing associations.Applicability of conflicting laws,
§2-2-429.**Livestock and poultry commission.**Disease or pest control and
eradication.Repeal of provisions in direct
conflict, §2-40-201.**CONFLICTS OF INTEREST.****Alcoholic beverages.**Director of department of finance and
administration, §3-2-101.**Cooperative marketing associations.**Contracts with association prohibited,
§2-2-414.**CONTAINERS.****Agriculture.**Grading of products and containers,
§§2-20-101 to 2-20-117.**Fertilizers.**

Analysis, §2-19-205.

Fruits.Labeling of fruits and vegetables for
interstate shipment, §§2-20-301 to
2-20-310.**Interstate commerce.**

Fruits and vegetables.

Labeling for interstate shipment,
§§2-20-301 to 2-20-310.**CONTEMPT.****Equine infectious anemia,
noncompliance with chapter,**
§2-40-802.**CONTRACTS.****Agricultural cooperative
associations.**

Breach of contract.

Bylaws may fix liquidated damages,
§2-2-117.

Penalty for inducing, §2-2-118.

Remedy, §2-2-117.

Marketing contracts, §2-2-116.

CONTRACTS —Cont'd**Agricultural cooperative associations —Cont'd**

- Participation contracts, §2-2-116.
- Power to contract, §2-2-106.
- Restraint of trade, §2-2-122.

Alcoholic beverages.

- Manufacturer-seller relationships.
- Prohibited acts and practices.
- Exclusivity agreements, §3-3-213.

Taxation.

- Payment by wholesalers and importers.

- Right to contract, §3-7-306.

Wholesale dealers and distributors.

- Terms and conditions binding on successor, §3-2-410.

Wholesalers' protection from arbitrary actions of suppliers.

- Applicability of subchapter to future agreements, §3-5-1103.

- Conditions for modifications of agreements, §3-5-1111.

Breach of contract.

- Agricultural cooperative associations, §§2-2-117, 2-2-118.

Cooperative marketing associations.

- Inducing breach of contract.
- Penalties, §2-2-420.

- Injunctions, §2-2-419.

Cooperative marketing associations.**Directors.**

- Contracts with association prohibited, §2-2-414.
- Inducing breach of contract, §2-2-420.
- Injunctions for breach of contract, §2-2-419.
- Liquidated damages, §2-2-419.
- Marketing contracts.
- Execution, §2-2-419.
- Other associations, §2-2-424.
- Restraints of trade, §2-2-426.

Livestock.**Production contracts.**

- Definitions, requirements, disputes, arbitration, violations, relief, §2-32-201.

Poultry production contracts, §2-32-201.**Statutes.**

- Effect of adoption of code on existing contracts, §1-2-111.

COOPERATIVE ASSOCIATIONS.**Agriculture.**

- Agricultural cooperative associations, §§2-2-101 to 2-2-313.
- Cooperative marketing associations, §§2-2-401 to 2-2-430.

COOPERATIVE ASSOCIATIONS**—Cont'd****Marketing associations, §§2-2-401 to 2-2-430.****COOPERATIVE MARKETING ASSOCIATIONS.****Activities of association, §2-2-405.****Articles of incorporation.**

- Amendments, §2-2-409.

- Fees, §2-2-410.

- Filing, §2-2-409.

- Contents, §2-2-408.

- Filing fees, §2-2-410.

- Subscriptions, §2-2-408.

Bylaws, §2-2-411.

- Adoption, §2-2-411.

- Liquidated damages for breach of marketing contract, §2-2-419.

- Transfer of common stock, §2-2-417.

Certificates of membership, §2-2-417.**Citation of act.**

- Short title, §2-2-401.

Conflict of laws.

- Applicability of conflicting laws, §2-2-429.

Conflicts of interest.

- Contracts with association prohibited, §2-2-414.

Contracts.**Directors.**

- Contracts with association prohibited, §2-2-414.
- Inducing breach of contract, §2-2-420.
- Injunctions for breach of contract, §2-2-419.
- Liquidated damages, §2-2-419.
- Marketing contracts.
- Execution, §2-2-419.
- Other associations, §2-2-424.
- Restraints of trade, §2-2-426.

Conversion to nonprofit corporate status, §2-2-430.**Corporations.**

- General corporation laws.
- Applicability, §2-2-428.

Damages.

- Breach of marketing contract.
- Fixing liquidated damages, §2-2-419.

Debts.

- Liability of members for debts of association, §2-2-417.

Definitions, §2-2-403.**Directors.**

- Compensation, §2-2-414.
- Conflicts of interest.
- Contracts with association prohibited, §2-2-414.

COOPERATIVE MARKETING ASSOCIATIONS —Cont'd

Directors —Cont'd

- Election, §2-2-414.
- Officers, §2-2-415.
- Removal, §2-2-416.
- Removal, §2-2-416.
- Vacancies, §2-2-414.

Division of territory into districts.

- Election of directors according to districts, §2-2-414.

Elections.

- Directors, §2-2-414.

Existing associations.

- Adoption of law, §2-2-425.

Fees.

- Amendments to articles, §2-2-410.
- Filing fees, §2-2-410.
- Existing associations, §2-2-425.

Franchise taxes.

- Exemption of associations, §2-2-427.

General corporation laws.

- Applicability, §2-2-428.

Injunctions.

- Breach of marketing contract, §2-2-419.

Interest in other corporations or associations.

- Authorized, §2-2-421.
- Warehousing, §2-2-423.

Investments.

- Reserves.
- Power to establish and invest, §2-2-406.

Legislative declaration.

- Purpose of provisions, §2-2-402.

License taxes.

- Exemptions, §2-2-427.

Meetings.

- Notice.
- Regular and special meetings, §2-2-413.
- Regular meetings.
- Notice, §2-2-413.
- Special meetings.
- Notice, §2-2-413.

Members.

- Admission of members, §2-2-407.
- Defined, §2-2-403.
- Matters referred to entire membership, §2-2-418.
- Nonstock associations, §2-2-407.

Monopolies.

- Associations and contracts not in restraint of trade, §2-2-426.

Nonprofit corporate status.

- Conversion to, §2-2-430.

COOPERATIVE MARKETING ASSOCIATIONS —Cont'd

Nonstock associations.

- Members other than natural persons, §2-2-407.

Notice.

- Regular and special meetings, §2-2-413.

Officers, §2-2-415.

- Removal, §2-2-416.

Organization.

- Persons who may organize, §2-2-404.

Other associations.

- Contracts and agreements, §2-2-424.
- Interest in other associations, §2-2-423.
- Purchase of stock or interest, §2-2-421.
- Warehouses, §2-2-423.

Person.

- Who may organize, §2-2-404.

Powers, §2-2-406.

Price fixing.

- Associations and contracts not in restraint of trade, §2-2-426.

Promissory notes.

- Acceptance of notes of members, §2-2-417.

Property.

- Powers as to property, §2-2-406.

Purchase of stock or interest in another corporation or association, §2-2-421.

Purpose of provisions, §2-2-402.

Purposes of association, §2-2-405.

Real property.

- Powers as to real property, §2-2-406.

Reports.

- Annual report, §2-2-422.
- Spreading false reports.
- Penalty, §2-2-420.

Reserves.

- Power to establish and invest, §2-2-406.

Restraints of trade.

- Associations and contracts not in restraint of trade, §2-2-426.

Short title of act, §2-2-401.

Status.

- Nonprofit associations, §2-2-403.

Stock and stockholders.

- Amount of common stock allowed, §2-2-417.
- Issuance, §2-2-407.
- Preferred stock, §2-2-417.
- Matters referred to stockholders, §2-2-418.
- Payment required, §2-2-417.

COOPERATIVE MARKETING ASSOCIATIONS —Cont'd

Stock and stockholders —Cont'd

- Purchase of common stock by association, §2-2-417.
- Purchase of stock in another corporation or association, §2-2-421.
- Security for payment of notes, §2-2-417.
- Transfer of common stock, §2-2-417.
- Votes, §2-2-417.

Taxation.

- Exemption from franchise or license tax, §2-2-427.

Title of act.

- Short title, §2-2-401.

Warehouses.

- Interest in other corporations or associations, §2-2-423.

COOPERATIVES.

Agricultural cooperative associations, §§2-2-101 to 2-2-313.

Cooperative marketing associations, §§2-2-401 to 2-2-430.

CORN AND GRAIN SORGHUM PROMOTION, §§2-20-801 to 2-20-806.

CORPORATIONS.

Agriculture.

- Agricultural cooperative associations.
- Application of general corporation laws, §2-2-119.
- General provisions, §§2-2-101 to 2-2-313.
- Interest in other corporation or association, §2-2-120.

Alcoholic beverages.

- Permits.
- Proceedings on dissolution of permittee firms, §3-4-103.

Cooperative marketing associations.

- Applicability of general corporation laws, §2-2-428.
- General provisions, §§2-2-401 to 2-2-430.

COSTS.

Agricultural operations.

- Proceeding to declare nuisance.
- Awarding court costs to prevailing party, §2-4-107.

Livestock or poultry production contracts.

- Civil action for violation, §2-32-201.

Tick control program.

- Cost-sharing, §2-40-902.

COTTER, CITY OF.

Trout capital of the United States.

- Designation, §1-4-123.

COTTON.

Boll weevil suppression and eradication, §§2-16-601 to 2-16-617.

Cooperative associations.

- Checks.
- Signatures of person on check, §2-2-201.
- Contracts.
- Membership contracts, §2-2-201.
- Merger and consolidation, §§2-2-301 to 2-2-313.
- Signatures.
- Draft or check, §2-2-201.
- Violations.
- Each violation deemed separate offense, §2-2-202.
- Penalties, §2-2-202.

Definitions.

- Public cotton gin, §2-20-201.

Fines.

- Gins.
- Refusing to gin cotton, §2-20-204.

Gins.

- Fines.
- Refusal to gin cotton, §2-20-204.
- Method of ginning, §2-20-203.
- Order in ginning, §2-20-202.
- Payment, §2-20-203.
- Penalties.
- Failure to keep or permit inspection of records, §2-20-206.
- Price, §2-20-203.
- Public cotton gin.
- Defined, §2-20-201.
- Records.
- Failure to keep or exhibit books, §2-20-208.
- Failure to keep or permit inspection.
- Penalty, §2-20-206.
- Ginners required to keep records of all seed cotton purchased, §2-20-205.
- Weights, §2-20-207.
- Refusing to gin cotton.
- Penalties, §2-20-204.
- Seeds.
- Disposition, §2-20-203.

Insecticides.

- Date stamped on cotton insecticides, §2-16-102.

Inspections.

- Gins.
- Failure to permit inspection of records.
- Penalty, §2-20-206.

COTTON —Cont'd**Penalties.**

Failure to keep records, §2-20-206.

Pesticides.

Date of manufacture stamped on cotton insecticides, §2-16-102.

Public cotton gin.

Defined, §2-20-201.

Records.

Ginners.

Seed cotton purchased, §2-20-205.

Seeds.

Cotton gins.

Disposition of seeds, §2-20-203.

Weights and measures.

Gins.

Failure to keep or exhibit books, §2-20-208.

Record of weights required, §2-20-207.

COTTON GINS, §§2-20-201 to 2-20-208.**COUNTERFEITING.****Boll weevil suppression eradication.**

Certificates, permits or other documents provided in subchapter.

Misdemeanor, §2-16-604.

COUNTIES.**Alcoholic beverages.**

Licenses and taxes, §3-4-202.

On-premises consumption, §3-9-202.

Supplemental tax or fee levied by city, incorporated town or county, §3-9-214.

Permits.

Beer and light wine.

Required for sale, distribution, and manufacture, §3-5-211.

Retailers' permits, §3-5-212.

Police power of local governments.

On-premises consumption of alcohol.

Rules and regulations, §3-9-205.

Taxation, §3-4-202.

Person.

Defined, §3-7-102.

Brucellosis.

Modified certified brucellosis free areas.

Action to qualify county as certified area, §2-40-602.

Licenses.

Alcoholic beverages, §3-4-202.

Livestock.

Impoundment of animals running at large.

Daily charges, §2-38-408.

COUNTIES —Cont'd**Livestock** —Cont'd

Impoundment of animals running at large —Cont'd

Enclosure provided by county, §2-38-403.

Running at large.

Impoundment of animals running at large.

Daily charges, §2-38-408.

Enclosure provided by county, §2-38-403.

Stray-pens.

Providing by county, §2-38-114.

Unclaimed estrays.

Payment to county, §2-38-121.

Livestock shows.

Adjoining counties.

Joint fair and livestock shows, §2-36-303.

Division of funds among counties and districts, §2-36-204.

Joint fair and livestock shows.

Allocation and use of funds, §2-36-303.

Grading, §2-36-303.

Nonresident landowners.

Eligibility to participate in county show, §2-36-304.

Taxation.

Alcoholic beverages, §3-4-202.

Tick control.

Agricultural extension service.

Assistance in receiving and processing applications, §2-40-903.

COUNTY JUDGES.**Fire ant poison cost sharing program.**

Responsibility for chemicals, §2-16-105.

CREMATION.**Dead animals.**

Fowl, §§2-40-401 to 2-40-406.

General provisions, §§2-40-301 to 2-40-303.

CRIMINAL HISTORY INFORMATION AND BACKGROUND.**Alcoholic beverage permit applicants, §3-2-103.****CRIMINAL LAW AND PROCEDURE.****Agricultural cooperative associations, §2-2-202.**

Breach of contract, §2-2-118.

CRIMINAL LAW AND PROCEDURE

—Cont'd

Agriculture.

Processing, grading, labeling and marketing, §§2-20-103, 2-20-403.

Alcoholic beverages, §3-3-102.

Beer and light wine, §§3-5-203, 3-5-221.

County and municipal retailers' permits, §3-5-212.

Nudity on premises, §3-5-222.

Sale and manufacture without state permit, §3-5-210.

Christmas day, §3-3-211.

Denatured alcohol sales, §3-3-214.

Dry territories, §3-3-302.

Failure to surrender confiscated beverages, §3-3-315.

Solicitation or taking orders, §3-3-310.

Excise taxes, §§3-7-103, 3-7-111.

Additional taxes, §3-7-111.

Wholesalers and importers, §3-7-303.

Federal license obtained without state license, §3-3-215.

Furnishing to alcoholics or intoxicated persons, §3-3-209.

Handling by minor, §3-3-204.

Kegs of beer or malt beverages.

Identification tags or labels.

Failure to attach for off-premises consumption, §3-5-227.

Knowingly furnishing or selling to minor, §3-3-202.

Local option, §3-8-310.

Microbreweries, §3-5-1207.

On-premises consumption, §§3-9-204, 3-9-236.

Permits.

Sale of alcoholic beverages without permit, §3-9-209.

Sundays, §3-9-403.

Wine, §3-9-302.

Permits.

Authorization to impose fines, §3-4-401.

Beer and light wine, §3-5-212.

Sale or manufacture without state permit, §3-5-210.

City and county licenses and taxes, §3-4-202.

Issuance, §3-4-204.

On-premises consumption, §3-9-236.

Possession or procuring orders, §3-3-208.

Procuring liquor for another, §3-3-309.

CRIMINAL LAW AND PROCEDURE

—Cont'd

Alcoholic beverages —Cont'd

Purchase or possession by minor, §3-3-203.

Sale, barter or possession for sale or barter in dry area, §3-8-312.

Sale in dry territory, §3-8-209.

Sale or delivery to retailer without tax receipt, §3-3-206.

Sale or possession without license, §3-3-205.

Sunday or early weekday morning sales, §3-3-210.

Unknowingly furnishing or selling to minor, §3-3-201.

Untaxed liquor, §3-3-216.

Wine and beer on-premises licenses.

Regulatory violations, §3-9-605.

Beef.

Marketing, sale and transportation, §2-35-302.

Boll weevil suppression and eradication.

Criminal penalties, §2-16-604.

Brucellosis, §2-40-210.**Canine brucellosis, §2-40-110.****Catfish promotion assessment.**

Noncompliance, §2-9-111.

Cattle quarantine lines, §§2-40-1001, 2-40-1002.

Transportation or drifting of cattle across lines, §2-40-1004.

Classes of violations and fines, §3-4-402.**Commercial bait and ornamental fish act.**

Unlawful acts, §2-5-207.

Commercial feeds, §2-37-113.**Control of contagious diseases, §2-40-101.**

Equine infectious anemia, §2-40-802.

Cooperative marketing associations.

Breach of contract, false reports, spreading, §2-2-420.

Cotton.

Insecticide or poison.

Date stamps on bags, §2-16-102.

Crops.

Damage or destruction of field crop products, §2-15-101.

Damage or destruction of field crop products, §2-15-101.**Drunkenness.**

Public intoxication.

Wine tasting events, §3-5-104.

Equine infectious anemia, §2-40-802.

CRIMINAL LAW AND PROCEDURE

—Cont'd

Fertilizers.

Sales in violation of act, §2-19-201.

Hogs.

Cholera.

Violations of provisions, §2-40-702.

Release feral hogs into the wild,
§2-38-504.**Intoxication.**

Public intoxication.

Wine tasting events, §3-5-104.

Irrigation discharges.Discharge of center pivot irrigation
water onto highways, §2-1-101.**Liming materials.**

Violations of act, §2-19-302.

Livestock.

Brands and marks.

Duplication, §2-34-202.

Interstate movement in violation of
regulations, §2-33-110.Marketing, sale and transportation,
§2-35-203.Filing and acknowledgment of
record, §2-35-208.

Transportation or sales, §2-35-203.

Native breweries.

Unlicensed operation, §3-5-1411.

Nurseries.

Agriculture, §2-21-104.

Plant disease and pest control,

§§2-16-203, 2-16-404.

Johnson grass, §2-16-503.

Prosecution, §2-16-304.

**Processing, grading, labeling and
marketing, §2-20-103.**Fruit and vegetable labeling,
§2-20-305.

Refusing to gin cotton, §2-20-204.

Rice promotion, §2-20-504.

Wheat promotion, §2-20-603.

Public intoxication.

Wine tasting events, §3-5-104.

Repeal of criminal or penal statute.

Effect on offenses committed, §1-2-120.

Seeds, §2-18-102.**Soybeans.**

Promotion.

Inspection of premises.

Refusal by persons required to pay
assessment, §2-20-403.**Statutes.**

Construction and interpretation.

Applicability of rules to criminal
cases, §1-2-201.

Repeal of criminal or penal statute.

Effect of offenses committed,
§1-2-120.**CRIMINAL LAW AND PROCEDURE**

—Cont'd

Warehousing of grain, §2-17-204.**CROPS.****Damage or destruction of field crop
products, §2-15-101.****Irrigation companies.**Discharge of center pivot irrigation
water onto highways, §2-1-101.**D****DAIRY COMMITTEE, §2-33-401.****DAISY GATSON BATES DAY,
§1-5-101.****DAMAGES.****Agricultural cooperative
associations.**

Liquidated damages.

Remedies for breach of contract,
§2-2-117.**Agriculture.**

Grading of products and containers.

Deputy inspectors and employees.

Persons injured by may sue on
bond, §2-20-110.**Alcoholic beverages.**Wholesalers' protection from arbitrary
actions of suppliers.

Civil action for violations, §3-5-1106.

Catfish processor fair practices.

Unlawful practices, §2-6-106.

Cooperative marketing associations.

Breach of marketing contract.

Fixing liquidated damages, §2-2-419.

Fences.Breaking through lawful fences,
§2-39-108.Injuring animals when fence
insufficient, §2-39-110.Liability for willfully damaging fence
or gate of another, §2-39-111.Owner's liability for damage done by
escaped livestock, §2-39-109.**Johnson grass.**

Civil actions by landowners, §2-16-508.

Livestock.

Running at large.

Liability for damage to crops,
§2-38-301.**Plant disease and pest control.**

Civil penalties, §2-16-203.

Seeds.

Arbitration of defective seed claims.

Arbitration committee.

Recommendation of money
damages, §2-23-105.

DANCE.**State folk dance.**

Square dance, §1-4-120.

DEAF PERSONS.**White cane safety day.**

Governor's proclamation regarding,
§1-5-108.

DEALERS.**Ginseng.**

Licenses, §2-20-704.
Fee, §2-20-704.

DEATH.**Governor.**

Lowering of state flag, §1-4-103.

DEBTS.**Agricultural cooperative associations.**

Liability of members for debts of
association, §2-2-114.

Cooperative marketing associations.

Liability of members for debts of
association, §2-2-417.

DECEIT.**Alcoholic beverages.****Beer.****Retailers.****Licenses.**

Applications, §3-5-303.

DEER.**State mammal, §1-4-122.****DEFINED TERMS.****Abandoned apiary, §2-21-101.****Accredited veterinarian.**

Equine infectious anemia, §2-40-801.

Action.

Farm mediation, §2-7-102.

Active ingredient.

Pesticide control, §2-16-403.
Soil amendments, §2-19-402.

Adjacent herds.

Equine infectious anemia, §2-40-801.

Adulterated.

Pesticide control, §2-16-403.
Soil amendments, §2-19-402.

Advanced biofuels.

Agriculture cooperative associations,
§2-8-102.

Advanced biofuels facilities.

Agriculture cooperative associations,
§2-8-102.

Advertisement.

Arbitration of defect seed claims,
§2-23-101.

Affected herd.

Equine infectious anemia, §2-40-801.

DEFINED TERMS —Cont'd**Agent.**

Nursery fraud, §2-21-102.

Agreement.

Beer, wholesalers and suppliers,
§3-5-1102.

Agricultural land.

Foreign investment, §2-3-102.

Agricultural operation.

Agricultural nuisances, §2-4-102.

Agricultural products.

Cooperative associations, §2-2-102.
Grading, §2-20-102.
Marketing associations, §2-2-403.

Agricultural property.

Farm mediation, §2-7-102.

Agricultural pursuit.

Domestic fish farming, §2-5-101.

Agricultural seed.

Arbitration of defect seed claims,
§2-23-101.

Agriculture.

Agricultural nuisances, §2-4-102.
Domestic fish farming, §2-5-101.

Alcoholic beverages.

Caterer's off-premise permits,
§3-4-901.

On-premises consumption, §3-9-202.

Sunday sales, §3-9-402.

Ancillary business.

Beer, wholesalers and suppliers,
§3-5-1102.

Animal.

Brand registry, §2-34-201.
Pesticide control, §2-16-403.

Apiary, §2-22-101.**Apiary equipment, §2-22-101.****Appliances.**

Bees and apiaries, §2-22-101.

Approved incineration.

Disposal of fowl carcasses, §2-40-401.

Approved laboratory.

Equine infectious anemia, §2-40-801.

Arbitration committee.

Arbitration of defect seed claims,
§2-23-101.

Assessment.

Boll weevil suppression or eradication,
§2-16-603.

Association.

Agricultural cooperatives, §2-2-102.
Marketing, §2-2-403.

Authorized agents.

Equine infectious anemia, §2-40-801.

Barrel.

Alcohol excise taxes, §3-7-116.
Microbreweries-restaurants, §3-5-1202.
Native breweries, §3-5-1403.

DEFINED TERMS —Cont'd**Base year qualified research costs.**

Biotechnology development and training, §2-8-102.

Bed and breakfast private club.

On-premises consumption, §3-9-202.

Bee disease, §2-22-101.**Beer, §3-5-202.**

Alcohol excise taxes, §3-7-116.

Microbreweries-restaurants, §3-5-1202.

Native breweries, §3-5-1403.

Nonresident beer sellers, §§3-5-202, 3-5-1302.

Registration of kegs for off premises consumption, §3-5-227.

Sunday beer and wine permit, §3-9-501.

Beer and malt beverage law or regulation.

Microbreweries-restaurants, §3-5-1202.

Beer, wholesalers and suppliers, §3-5-1102.**Bees, §2-22-101.****Beneficial insects.**

Pesticide control, §2-16-403.

Biotechnology, §2-8-102.**Biotechnology facilities, §2-8-102.****Block.**

Alcoholic beverages, §3-1-102.

Boll weevil.

Suppression or eradication, §2-16-603.

Branching.

Farm mediation, §2-7-102.

Brand.

Alcoholic beverage distribution, §3-2-412.

Registry, §2-34-201.

Brand name.

Commercial feeds, §2-37-103.

Brewer.

Nonresident beer sellers, §§3-5-202, 3-5-1302.

Brewery.

Beer and light wine, §3-5-202.

Native breweries, §3-5-1403.

Bulk.

Soil amendments, §2-19-402.

Buyer.

Arbitration of defect seed claims, §2-23-101.

Cabins and cottages.

Alcoholic beverages, §3-5-106.

Cafe.

Wines, §3-9-301.

Capable of use as human food.

Catfish processor fair practices, §2-6-103.

DEFINED TERMS —Cont'd**Cash sale.**

Catfish processor fair practices, §2-6-103.

Caterer's off-premises permits.

Alcoholic beverages, §3-4-901.

Catfish.

Processor fair practices, §2-6-103.

Catfish industry.

Arkansas catfish promotion board, §2-9-102.

Certificate.

Boll weevil suppression or eradication, §2-16-603.

Certificate of veterinary inspection.

Equine infectious anemia, §2-40-801.

Certified EIA verifier, §2-40-801.**Chairperson.**

Arbitration of defect seed claims, §2-23-101.

Characteristics of commercial impact.

Rice certification act, §2-15-202.

City.

On-premises alcoholic beverage consumption, §3-9-202.

Class A registrant.

Catfish processor fair practices, §2-6-103.

Closed package.

Labeling of fruits and vegetables, §2-20-302.

Colony.

Bees and apiaries, §2-22-101.

Combination.

Labeling of fruits and vegetables, §2-20-302.

Commercial catfish producer.

Catfish promotion board, §2-9-102.

Commercial feed, §2-37-103.**Concentration point.**

Equine infectious anemia, §2-40-801.

Conflicting beer or malt beverage law or regulation.

Microbreweries-restaurants, §3-5-1202.

Consumer.

Beer and light wine, §3-5-202.

Contract brewing company.

Native breweries, §3-5-1403.

Contract feeder.

Commercial feeds, §2-37-103.

Contractor.

Livestock or poultry production contracts, §2-32-201.

Costs.

Biotechnology development and training, §2-8-102.

DEFINED TERMS —Cont'd**Cotton.**

Boll weevil suppression or eradication,
§2-16-603.

Cotton grower.

Boll weevil suppression or eradication,
§2-16-603.

Creditor.

Farm mediation, §2-7-102.

Credit year.

Biotechnology development and
training, §2-8-102.

Culls.

Labeling of fruits and vegetables,
§2-20-302.

Cultivated crop.

Domestic fish farming, §2-5-101.

Customer-formula feed, §2-37-103.**Dangerous insect pest and plant diseases.**

Emergency plant act, §2-16-302.

Dealer.

Arbitration of defect seed claims,
§2-23-101.

Nursery fraud, §2-21-102.

Defoliant.

Pesticide control, §2-16-403.

Desiccant.

Pesticide control, §2-16-403.

Designated epidemiologist.

Equine infectious anemia, §2-40-801.

Designated member.

Beer, wholesalers and suppliers,
§3-5-1102.

Device.

Pesticide control, §2-16-403.

Direct retail sale.

Catfish processor fair practices,
§2-6-103.

Dispensary.

Alcoholic beverages, §3-1-102.

Distribute.

Commercial feeds, §2-37-103.

Pesticide control, §2-16-403.

Soil amendments, §2-19-402.

Distributor.

Beer and light wine, §3-5-202.

Commercial feeds, §2-37-103.

Soil amendments, §2-19-402.

Domesticated fish.

Farming, §2-5-102.

Drug.

Commercial feeds, §2-37-103.

Dry.

Local option election.

Annexation of dry township into wet
city or town, §3-8-501.

DEFINED TERMS —Cont'd**Dry area.**

Microbreweries-restaurants, §3-5-1202.

On-premises beverage consumption,
§3-9-202.

EIA, §2-40-801.**EIAV, §2-40-801.****Eminent hazard.**

Pesticide control, §2-16-403.

Environment.

Pesticide control, §2-16-403.

Epidemiologist investigation.

Equine infectious anemia, §2-40-801.

Equidae.

Equine infectious anemia, §2-40-801.

Equine activity.

Equine infectious anemia, §2-40-801.

Equine infectious anemia, §2-40-801.**Excursion boat.**

Sunday sales of alcoholic beverages,
§3-9-402.

Exposed equidae.

Equine infectious anemia, §2-40-801.

Farmer.

Mediation, §2-7-102.

Farming.

Mediation, §2-7-102.

Farming operation.

Agricultural nuisances, §2-4-102.

Federal regulations.

Microbreweries-restaurants, §3-5-1202.

Feed dealer.

Catfish promotion board, §2-9-102.

Feed ingredient, §2-37-103.**Feed seller.**

Catfish promotion board, §2-9-102.

Fence, §2-39-102.**Feral hogs, §2-38-501.****Final determination.**

Alcoholic beverage local options,
§3-8-102.

Finance lease.

Biotechnology development and
training, §2-8-102.

Foreign government.

Agricultural investments, §2-3-102.

Foreign party.

Agricultural foreign investments,
§2-3-102.

Fowl carcasses.

Disposal, §2-40-401.

Fungus.

Pesticide control, §2-16-403.

Good faith.

Beer, wholesalers and suppliers,
§3-5-1102.

Grain.

Public warehouses, §2-17-202.

DEFINED TERMS —Cont'd**Grain —Cont'd**

Title in public warehouses, §2-17-301.

Grower.

Beer and light wine, §3-5-205.

Livestock or poultry production contracts, §2-32-201.

Herd.

Equine infectious anemia, §2-40-801.

Hereafter, §1-2-204.**Heretofore, §1-2-204.****Higher education partnerships.**

Agriculture cooperative associations, §2-8-102.

Biotechnology development and training, §2-8-102.

Highly toxic pesticide.

Control, §2-16-403.

Hive.

Bees and apiaries, §2-22-101.

Hog cholera virus, §2-40-701.**Home-brewed.**

Beer and light wine, §3-5-202.

Host.

Boll weevil suppression or eradication, §2-16-603.

Hotel.

On-premises alcoholic beverage consumption, §3-9-202.

Sunday beer and wine permit, §§3-9-402, 3-9-501.

Sunday sales of alcoholic beverages, §3-9-402.

Illicit still, §3-3-401.**Inert ingredient.**

Pesticide control, §2-16-403.

Soil amendments, §2-19-402.

Infested.

Boll weevil suppression or eradication, §2-16-603.

Ingredient statement.

Pesticide control, §2-16-403.

Insect.

Pesticide control, §2-16-403.

Integrated operator.

Commercial feeds, §2-37-103.

Intellectual property.

Biotechnology development and training, §2-8-102.

Intoxicating liquor.

Beer and light wine, §3-5-202.

Local option election.

Annexation of dry township into wet city or town, §3-8-501.

Keg.

Registration of beer kegs for off premises consumption, §3-5-227.

DEFINED TERMS —Cont'd**Label.**

Arbitration of defect seed claims, §2-23-101.

Commercial feeds, §2-37-103.

Pesticide control, §2-16-403.

Soil amendments, §2-19-402.

Labeler.

Arbitration of defect seed claims, §2-23-101.

Labeling.

Arbitration of defect seed claims, §2-23-101.

Commercial feeds, §2-37-103.

Pesticide control, §2-16-403.

Soil amendments, §2-19-402.

Large animal.

Disposal of carcass, §2-40-1301.

Large animal carcasses.

Disposal, §2-40-1301.

Large meeting or attendance facility.

On-premises alcoholic beverage consumption, §3-9-202.

License.

Public warehouse receivership, §2-17-401.

Wine and beer on-premises licenses, §3-9-601.

Wines, §3-9-301.

Light spirituous liquor.

Excise taxes, §3-7-104.

Light wine, §3-5-202.

Excise taxes, §3-7-104.

Liming material.

Labeling, §2-19-303.

Livestock.

Brand registry, §2-34-201.

Domestic fish farming, §2-5-101.

Livestock dealer.

Equine infectious anemia, §2-40-801.

Local legislation.

Fertilizers, §2-19-212.

Malt.

Alcoholic beverages, §3-1-102.

Malt beverage.

Alcohol excise taxes, §3-7-116.

Microbreweries-restaurants, §3-5-1202.

Native breweries, §3-5-1403.

Registration of kegs for off premises consumption, §3-5-227.

Malt liquor.

Nonresident beer sellers, §§3-1-102, 3-5-1302.

Manufacture.

Commercial feeds, §2-37-103.

Manufacturer.

Alcoholic beverage exclusivity agreements, §3-3-213.

DEFINED TERMS —Cont'd**Manufacturer —Cont'd**

- Alcoholic beverages, §3-1-102.
- Nonresident beer sellers, §§3-1-102, 3-5-1302.
- Soil amendments, §2-19-402.

Material risk.

- Livestock or poultry production contracts, §2-32-201.

Mediation.

- Farming, §2-7-102.

Member.

- Agricultural cooperative associations, §2-2-102.
- Marketing associations, §2-2-403.

Microbrewery-restaurant.

- Native breweries, §3-5-1403.

Mineral feed, §2-37-103.**Minority, §§1-2-503, 1-2-504.****Misbranded.**

- Soil amendments, §2-19-402.

Name.

- Soil amendments, §2-19-402.

Native brewer.

- Native breweries, §3-5-1403.

Native brewery, §3-5-1403.**Negative current EIA test, §2-40-801.****Neighboring herd.**

- Equine infectious anemia, §2-40-801.

Nematode.

- Pesticide control, §2-16-403.

Net market price.

- Soybean promotion, §2-20-402.

Nucleus.

- Bees and apiaries, §2-22-101.

Nursery.

- Fraud, §2-21-102.

Nursery man.

- Fraud, §2-21-102.

Nursery stock.

- Fraud, §2-21-102.

Official EIA test, §2-40-801.**Official sample.**

- Commercial feeds, §2-37-103.

Off-premise caterer.

- Caterer's off-premises permits, §3-4-901.

Off-premises.

- Registration of beer kegs for off-premises consumption, §3-5-227.

One hundred percent natural organic fertilizer, §2-19-501.**On-premises beverage consumption.**

- Alcoholic beverages, §3-9-202.

On-premises consumption.

- Sunday sales of alcoholic beverages, §3-9-402.

DEFINED TERMS —Cont'd**Owner.**

- Catfish processor fair practices, §2-6-103.
- Title to grain in public warehouses, §2-17-301.

Package.

- Bees and apiaries, §2-22-101.

Participant.

- Equine infectious anemia, §2-40-801.

Party.

- Agricultural foreign investments, §2-3-102.
- Farm mediation, §2-7-102.

Percent.

- Commercial feeds, §2-37-103.
- Soil amendments, §2-19-402.

Percentage.

- Soil amendments, §2-19-402.

Permit.

- Boll weevil suppression or eradication, §2-16-603.
- Equine infectious anemia, §2-40-801.

Permittee.

- Alcoholic beverages, §3-4-802.

Person.

- Agricultural cooperative association, §2-2-102.
- Agricultural product grading, §2-20-102.
- Alcoholic beverage excise taxes, §3-7-102.
- Alcoholic beverage exclusivity agreements, §3-3-213.
- Alcoholic beverages, §3-1-102.
- Arbitration of defect seed claims, §2-23-101.
- Beer and light wine, §3-5-202.
- Boll weevil, §2-16-603.
- Catfish processor fair practices, §2-6-103.
- Commercial bait and ornamental fish act, §2-5-203.
- Commercial feeds, §2-37-103.
- Dry territories, §3-3-301.
- Fruit and vegetable labeling, §2-20-302.
- Marketing associations, §2-2-403.
- Microbreweries-restaurants, §3-5-1202.
- Native breweries, §3-5-1403.
- Nursery fraud, §2-21-102.
- On-premises alcoholic beverage consumption, §3-9-202.
- On-premises consumption, §3-9-202.
- Pesticide control, §2-16-403.
- Public grain warehouses, §2-17-202.
- Rice certification act, §2-15-202.
- Seeds, §2-18-101.

DEFINED TERMS —Cont'd**Person —Cont'd**

- Soil ingredients, §2-19-402.
- Sunday sales of alcoholic beverages, §3-9-402.
- Suppression or eradication, §2-16-603.
- Wine and beer on-premises licenses, §3-9-601.
- Wines, §3-9-301.

Pesticide.

- Control, §2-16-403.

Pests.

- Pesticide control, §2-16-403.

Pet.

- Commercial feeds, §2-37-103.

Pet food, §2-37-103.**Places.**

- Agricultural product grading, §2-20-102.
- Fruit and vegetable labeling, §2-20-302.

Plant regulators.

- Pesticide control, §2-16-403.

Political subdivisions.

- Fertilizers, §2-19-212.

Pollination.

- Bees and apiaries, §2-22-101.

Premixed spirituous liquor.

- Excise taxes, §3-7-104.

Primary American source of supply.

- Nonresident beer sellers, §3-5-1308.

Private club.

- On-premises alcoholic beverage consumption, §3-9-202.
- Sunday sales of alcoholic beverages, §3-9-402.

Processor.

- Catfish fair practices, §2-6-103.
- Catfish promotion board, §2-9-102.

Producer.

- Catfish fair practices, §2-6-103.

Producer brewery.

- Native breweries, §3-5-1403.

Product.

- Catfish processor fair practices, §2-6-103.

Production.

- Livestock or poultry production contracts, §2-32-201.

Production contract.

- Livestock or poultry production contracts, §2-32-201.

Product name.

- Commercial feeds, §2-37-103.

Proper regulation.

- Beer and light wine, §3-5-202.

Protect health and environment.

- Pesticide control, §2-16-403.

DEFINED TERMS —Cont'd**Public grain warehouse, §2-17-202.****Public grain warehouseman, §2-17-202.**

- Grain title, §2-17-301.

Purchase.

- Biotechnology development and training, §2-8-102.

Qualified manufacturer.

- Alcohol excise taxes, §3-7-116.

Qualified research.

- Biotechnology development and training, §2-8-102.

Quantity statement.

- Commercial feeds, §2-37-103.

Quarantine.

- Equine infectious anemia, §2-40-801.

Quarantined holding facility.

- Equine infectious anemia, §2-40-801.

Reactor.

- Equine infectious anemia, §2-40-801.

Reasonable qualifications.

- Beer, wholesalers and suppliers, §3-5-1102.

Referendum election.

- On-premises alcoholic beverage consumption, §3-9-202.

- On-premises consumption, §3-9-202.

Registrant.

- Pesticide control, §2-16-403.
- Soil amendments, §2-19-402.

Regulated article.

- Boll weevil suppression or eradication, §2-16-603.

Regulation.

- Beer and light wine, §3-5-202.

Regulatory veterinarian.

- Equine infectious anemia, §2-40-801.

Research facility.

- Equine infectious anemia, §2-40-801.

Responsible person.

- Disposal of fowl carcasses, §2-40-401.

Restaurant.

- Microbreweries-restaurants, §3-5-1202.
- Native breweries, §3-5-1403.
- On-premises alcoholic beverage consumption, §3-9-202.
- Sunday beer and wine permit, §3-9-501.
- Sunday sales of alcoholic beverages, §3-9-402.
- Wines, §3-9-301.

Restricted-use pesticide.

- Control, §2-16-403.

Retail dealer.

- Beer and light wine, §3-5-202.

Retailer's permit.

- Alcoholic beverages, §3-4-204.

DEFINED TERMS —Cont'd**Retaliatory action.**

Beer, wholesalers and suppliers,
§3-5-1102.

Ripes.

Labeling of fruits and vegetables,
§2-20-302.

Sales territory.

Beer, wholesalers and suppliers,
§3-5-1102.

Secured party.

Catfish processor fair practices,
§2-6-103.

Seed, §2-18-101.**Seller.**

Catfish promotion board, §2-9-102.

Similarly situated wholesalers.

Beer, §3-5-1102.

Small brewery.

Native breweries, §3-5-1403.

Small farm winery.

Free trade among small wineries,
§3-5-1601.

Soil amendments, §2-19-402.**Specialty fertilizer.**

Registration, §2-19-202.

Specialty pet.

Commercial feeds, §2-37-103.

Specialty pet food, §2-37-103.**Spirituos.**

Alcoholic beverages, §3-1-102.

Spirituos liquor.

Alcoholic beverage excise taxes,
§3-7-104.

Spray adjuvant.

Pesticide control, §2-16-403.

State plant board.

Boll weevil suppression or eradication,
§2-16-603.

State restricted-use pesticide.

Control, §2-16-403.

Stored grain.

Public warehouses, §2-17-202.

Substantial stockholder or substantial partner.

Beer, wholesalers and suppliers,
§3-5-1102.

Supplier.

Beer, §3-5-1102.
Nonresident beer sellers, §§3-5-1102,
3-5-1302.

Ton.

Commercial feeds, §2-37-103.

Training.

Agriculture cooperative associations,
§2-8-102.
Biotechnology development and
training, §2-8-102.

DEFINED TERMS —Cont'd**Transfer of wholesalers' business.**

Beer, §3-5-1102.

Turf, §2-16-109.**Ungraded.**

Labeling of fruits and vegetables,
§2-20-302.

Unreasonable adverse effects on the environment.

Pesticide control, §2-16-403.

Utility.

Labeling of fruits and vegetables,
§2-20-302.

Vested permits.

Alcoholic beverages, §3-4-205.

Vinous.

Alcoholic beverages, §3-1-102.

Vinous liquor.

Excise taxes, §3-7-104.

Warehouse.

Beer and light wine, §3-5-202.
Receivership of public warehouses,
§2-17-401.

Warehouse receipt.

Public grain warehouses, §2-17-202.

Weed.

Pesticide control, §2-16-403.

Wet.

Local option election.
Annexation of dry township into wet
city or town, §3-8-501.

Wholesale dealer and distributor.

Beer and light wine, §3-5-202.

Wholesaler.

Alcohol excise taxes, §3-7-116.
Beer, §3-5-1102.
Nonresident beer sellers, §§3-5-202,
3-5-1302.

Wholesale support center.

Nonresident beer sellers, §3-5-1302.

Wildlife.

Pesticide control, §2-16-403.

Wine.

Gross receipts and supplemental taxes
on sales, §3-9-213.
Sunday beer and wine permit,
§3-9-501.
Wine and beer on-premises licenses,
§3-9-601.

Winery.

Light wine, §3-5-202.

DENATURED ALCOHOL.**Alcoholic beverages.**

Prohibited acts and practices,
§3-3-214.

DEPOSITS.**Livestock and poultry commission.**

Fees, revenues, fines and penalties,
§2-33-113.

Soybeans.

Promotion assessment, §2-20-406.

DIAMONDS.

State gem, §1-4-111.

DIANA FRITILLARY BUTTERFLY.

State butterfly, §1-4-126.

**DISABILITIES, INDIVIDUALS
WITH.**

Statutory language to be respectful,
§1-2-124.

White cane safety day, §1-5-108.

DISEASES.**Animals.**

Bringing in diseased animal,
§2-40-101.

Expenses of enforcement of act,
§2-40-107.

Horses.

Equine infectious anemia,
§§2-40-801 to 2-40-829.

Owners of diseased animals.

Duties, §2-40-104.

Bees and honey.

Defined, §2-22-101.

Duties of persons engaged in
beekeeping upon detection of
disease, §2-22-109.

Quarantine, §2-22-112.

Cats.

Bringing in diseased animal,
§2-40-101.

Duties of owner, §2-40-104.

**Commercial bait and ornamental
fish act**, §§2-5-201 to 2-5-208.**Dogs.**

Bringing in diseased animal,
§2-40-101.

Owners of diseased animals,
§2-40-104.

Equine infectious anemia, §§2-40-801
to 2-40-829.**Horses.**

Equine infectious anemia, §§2-40-801
to 2-40-829.

Quarantine.

Cattle, §§2-40-1001 to 2-40-1006.

DIVISION FENCES.

Maintenance, §2-39-105.

DR. MARTIN LUTHER KING, JR.

Official holiday, §1-5-101.

DOGS.

Commercial feeds, §§2-37-101 to
2-37-114.

Diagnostic testing.

Small animal diagnostic testing,
§2-33-112.

Diseases.

Bringing in diseased animal,
§2-40-101.

Owners of diseased animals,
§2-40-104.

Feeds.

Commercial feeds, §§2-37-101 to
2-37-114.

Small animal diagnostic testing,
§2-33-112.

DOLOMITE.

Agricultural liming materials,
§§2-19-301 to 2-19-308.

DROVERS.

General provisions, §§2-34-301 to
2-34-304.

DRUNKENNESS.**Drinking in public.**

Wine tasting events, §3-5-104.

Public intoxication.

Wine tasting events, §3-5-104.

DUTCH OVEN.

State historic cooking vessel,
§1-4-125.

E**ECONOMIC DEVELOPMENT.**

Catfish promotion board, §§2-9-101 to
2-9-112.

EDUCATION.**Alcoholic beverages.**

Retail liquor business.

Operation of business within certain
distance of schoolhouse
prohibited, §3-4-206.

ELECTIONS.**Alcoholic beverages.**

Local option elections, §§3-8-101 to
3-8-401.

Sunday beer and wine permits.

Hotels and restaurants, §3-9-506.

Catfish promotion board.

Voter referendum.

Levy assessment, §2-9-107.

Qualifications of voters, §2-9-106.

Cattle.

Beef council.

Election on levy of assessment on
cattle, §2-35-304.

ELECTIONS —Cont'd**Local option elections.**

Alcoholic beverages, §§3-8-101 to 3-8-401,

Wheat promotion act.

Referendum in each county, §2-20-605.

EMERGENCIES.**Wine.**

Disaster relief, §§3-5-801 to 3-5-807.

ENGLAND.**Common and statutory law of England.**

Adoption, §1-2-119.

ENGLISH LANGUAGE.

Official language of state, §1-4-117.

EQUINE INFECTIOUS ANEMIA.

General provisions, §§2-40-801 to 2-40-829.

ESTRAYS.

Feral hogs, §2-38-504.

Horses.

Compensation for keeping, §2-38-117.

Livestock.

Estrays and running at large, §§2-38-101 to 2-38-504.

Mules.

Compensation for keeping, §2-38-117.

EVIDENCE.**Agriculture.**

Grading of products and containers.
Certificates prima facie evidence of grade, §2-20-115.

Alcoholic beverages.

Denatured alcohol.
Sale for beverage purposes prohibited.
Prima facie evidence in sale of alcohol, §3-3-214.

Federal license.

Sale of liquor or beer on federal license without state license.
Prima facie evidence of unlawful possession, §3-3-215.

Illicit manufacture and equipment.

Burden of proof.
Registration of still or apparatus, §3-3-401.

Reputation of defendant, §3-3-405.

Privilege license holders.

Burden of proof of violations, §3-3-218.

Livestock.

Brands and marks.
State brand book.
Prima facie evidence of ownership, §2-34-211.

EVIDENCE —Cont'd**Mail.**

Certified mail.

Return receipt as evidence, §1-2-122.

Seeds.

Arbitration of defective seed claims.

Arbitration committee.

Investigation and report.

Findings as evidence, §2-23-107.

EXECUTIONS.**Livestock.**

Running at large.

Delinquency in payment by taker-up, §2-38-121.

EXPLOSIONS AND EXPLOSIVES.**Grain.**

Public grain warehouses.

Insurance against loss of grain due to disaster, §2-17-218.

F**FAIRS.**

North Central Arkansas district fair and livestock show, §2-36-306.

Northeast Arkansas district fair advisory board, §2-36-302.

Sales.

Immoral, lewd, etc., items, §2-36-103.

FARM MEDIATION, §§2-7-101 to 2-7-310.

FARM PRODUCTS.

Agricultural cooperative associations, §§2-2-101 to 2-2-313.
Cooperative marketing associations, §2-2-401 to 2-2-430.

Damage or destruction of field crop products, §2-15-101.

Rice research and promotion act.

General provisions, §§2-20-501 to 2-20-510.

Wheat promotion act.

General provisions, §§2-20-601 to 2-20-610.

FARM RAISED BAIT AND

ORNAMENTAL FISH, §§2-5-201 to 2-5-208.

Certification.

Display only by person certified, §2-5-205.

Establishment of voluntary certification program.

Purpose of subchapter, §2-5-202.

Fees.

Board may prescribe, deposit, §2-5-206.

FARM RAISED BAIT AND**ORNAMENTAL FISH —Cont'd****Certification —Cont'd**

Issuance to person meeting standards and qualifications, §2-5-205.

Revocation of certificate, §2-5-207.

Unlawful acts, §2-5-207.

Commercial bait and ornamental fish act.

Subchapter known and cited as, §2-5-201.

Commercial bait and ornamental fish fund.

Deposit of fees, §2-5-206.

Definitions, §2-5-203.**Deputies to implement provision.**

Appointment by director of state plant board.

Authorization, §2-5-204.

Fees.

Board may prescribe, deposit, §2-5-206.

Intergovernmental cooperation, §2-5-208.**Powers and duties of state plant board, §2-5-204.****Purpose of subchapter, §2-5-202.****Unlawful acts, penalty, §2-5-207.****FARMS AND FARMERS.****Farm mediation, §§2-7-101 to 2-7-310.****Fishing.**

Farm raised bait and ornamental fish, §§2-5-201 to 2-5-208.

Wheat promotion act.

General provisions, §§2-20-601 to 2-20-610.

Young and beginning farmer advisory board, §§2-1-201 to 2-1-206.**FEEDS.****Commercial feeds, §§2-37-101 to 2-37-114.****FEES.****Agricultural cooperative associations.**

Annual license fee.

Payment to secretary of state, §2-2-123.

Filing fees, §2-2-124.

Existing entities, §2-2-121.

Animals.

Small animal diagnostic testing, §2-33-112.

Brucellosis.

Vaccination.

Funding of brucellosis program, §2-40-206.

FEES —Cont'd**Catfish processor fair practices.**

Registration, §2-6-105.

Cattle.

Rabies.

Pseudorabies control and eradication program.

Levy of fees to fund, §2-40-1201.

Commercial feeds.

Inspection fees, §2-37-114.

Cooperative marketing associations.

Amendments to articles, §2-2-410.

Filing fees, §2-2-410.

Existing associations, §2-2-425.

Fertilizers.

Brand registration and facility licensing fees, §2-19-202.

Natural organic fertilizers.

Setting and collecting, §2-19-502.

Ginseng.

Artificial propagation fee, §2-20-705.

Dealers.

Licenses, §2-20-704.

Grain.

Public warehouses.

Licenses, §2-17-213.

Liming materials.

Registration fee, §2-19-306.

Vendors' licenses, §2-19-306.

Livestock, §2-40-1201.

Diagnostic testing, §2-33-111.

Disposition of funds, §2-40-1201.

Rabies.

Pseudorabies control and eradication program.

Levy of fees to fund, §2-40-1201.

Livestock and poultry commission,

§§2-33-113, 2-33-115.

Carcass data information, §2-33-203.

Deposit of funds received, §2-33-206.

Diagnostic testing.

Disposition of fees, §2-33-111.

Fee structure, §2-33-111.

Feeder pig and feeder calf grading program, §2-33-204.

Failure to pay, §2-33-204.

Native breweries.

General fees, §3-5-1408.

Wholesalers and retailers, §3-5-1406.

Pesticides.

Registration, §2-16-407.

Poultry.

Diagnostic testing, §2-33-111.

Publication.

Notices, §1-3-107.

Seeds.

Arbitration of defective seed claims.

Complaints against dealers.

Filing fees, §2-23-102.

FEES —Cont'd**Seeds —Cont'd**

Arbitration of defective seed claims
—Cont'd

Investigations requested by dealers.
Filing fee, §2-23-103.

Inspection and certification and
promotion and advertising,
§2-18-105.

Soil amendment.

Inspection fees.

Payment by registrant, §2-19-410.

FENCES.**Animals.**

Breaking through lawful fences.

Damages recoverable, §2-39-108.

Injuring animals when fence
insufficient.

Liability, §2-39-110.

Complaints.

Disinterested householders to view
fence, §2-39-107.

Damages.**Animals.**

Breaking through lawful fences,
§2-39-108.

Injuring animals when fence
insufficient, §2-39-110.

Liability for willfully damaging fence
or gate of another, §2-39-111.

Owner's liability for damage done by
escaped livestock, §2-39-109.

Definitions.

Fence, defined, §2-39-102.

Disinterested householders.

Viewing fence, §2-39-107.

Division fences.

Maintenance, §2-39-105.

Injuring fence.

Liability, §2-39-111.

Insufficient fence.

Injuring animals when fence
insufficient.

Liability, §2-39-110.

Liability.

Injuring fence, §2-39-111.

Willfully damaging fence or gate of
another, §2-39-111.

Livestock.

Fences required for enclosures,
§2-39-101.

Maintenance.

Division fences, §2-39-105.

Motor vehicles.

Escaped livestock where damaged by
motor vehicle.

Owner's liability, §2-39-109.

FENCES —Cont'd**Penalties.**

Liability for willfully damaging fence
or gate of another, §2-39-111.

Requirement for enclosures,
§2-39-101.**Sufficiency of fence.**

How adjudged, §2-39-106.

Witnesses.

Testimony of disinterested
householders, §2-39-107.

FERAL HOGS, §§2-38-501 to 2-38-504.**FERTILIZERS.****Analysis.**

Containers must show, §2-19-205.

Deficiencies.

Penalty for deficiency, §2-19-206.

Delivery to chief department chemist,
§2-19-208.

Report of guaranteed analysis,
§2-19-202.

Audits.

Right of plant board or agents,
§2-19-209.

Blending or bulk storage facilities.

Licenses, §2-19-202.

Sale of fertilizers manufactured at
unlicensed facility.

Prohibited, §2-19-203.

Bone meal.

Statement of phosphoric acid content,
§2-19-202.

Brands.

Registration, §2-19-202.

Containers.

Analysis, §2-19-205.

Definitions.

Natural organic fertilizers, §2-19-501.

Specialty fertilizers, §2-19-202.

Exempted transactions, §2-19-204.**Fees.**

Brand registration and facility
licensing fees, §2-19-202.

Natural organic fertilizers.

Setting and collecting, §2-19-502.

Grades.

Mixed formulations.

Report on monthly basis, §2-19-202.

Inspections.

Plant board, §2-19-209.

Waiver.

No protection to party selling or
offering unregistered fertilizer,
§2-19-203.

Licenses.

Blending or bulk storage facilities,
§2-19-202.

Fees, §2-19-202.

FERTILIZERS —Cont'd**Licenses —Cont'd**

- Blending or bulk storage facilities —Cont'd
- Sale of fertilizers manufactured at unlicensed facilities.
- Prohibited, §2-19-203.
- Standards and criteria.
- Promulgation by plant board, §2-19-202.

Manufacturers.

- Containers to show analysis, §2-19-205.
- Reports.
- Tonnage reports, §2-19-209.
- Unregistered fertilizers.
- Sale unlawful, §2-19-203.

Natural organic fertilizers,

- §§2-19-501 to 2-19-503.
- Definitions, §2-19-501.
- Exemptions, §2-19-503.
- Fees.
- Setting and collecting, §2-19-502.
- Guarantee of elements, §2-19-502.
- Manufacture and sale.
- Regulation and supervision by plant board, §2-19-502.
- 100% natural organic fertilizer.
- Defined, §2-19-501.
- Penalties.
- Setting and collecting, §2-19-502.
- Private sale of unprocessed animal litter.
- Exemptions, §2-19-503.
- Rules and regulations.
- Promulgation by plant board, §2-19-502.
- Unprocessed animal litter.
- Private sale.
- Exemptions, §2-19-503.

Organic fertilizers.

- Natural organic fertilizers, §§2-19-501 to 2-19-503.

Penalties.

- Audits.
- Refusal to allow, §2-19-209.
- Deficiencies, §2-19-206.
- Inspections.
- Refusal to allow, §2-19-209.
- Natural organic fertilizers.
- Setting and collecting, §2-19-502.

Plant board.

- Analysis.
- Delivery to chief department chemist, §2-19-208.
- Audits, §2-19-209.
- Inspections, §2-19-209.

FERTILIZERS —Cont'd**Plant board —Cont'd**

- Rules and regulations.
- Established, §2-19-211.
- Samples.
- Obtaining samples, §2-19-207.
- Stop sale order, §2-19-211.
- Preemption of local laws,** §2-19-212.
- Primary plant food.**
- Minimum units required, §2-19-202.
- Exceptions, §2-19-202.
- Registration,** §2-19-202.
- Approval by plant board, §2-19-202.
- Cancellation, §2-19-202.
- Expiration, §2-19-202.
- Fees, §2-19-202.
- Guaranteed analysis, §2-19-202.
- Required, §2-19-202.
- Special fertilizer grade, §2-19-202.
- Unregistered fertilizers.
- Sale prohibited, §2-19-203.

Reports.

- Grades.
- Mixed formulations reported on monthly basis, §2-19-202.
- Guaranteed analysis, §2-19-203.
- Tonnage reports, §2-19-209.

Rock phosphate.

- Statement of phosphoric acid content, §2-19-202.

Rules and regulations.

- Authority of plant board, §2-19-211.
- Natural organic fertilizers.
- Promulgation by plant board, §2-19-502.

Sales.

- Blending or bulk storage facilities.
- Sale of fertilizers manufactured at unlicensed facilities.
- Prohibited, §2-19-203.
- Exempted transactions, §2-19-204.
- Penalties.
- Selling in violation of act, §2-19-201.
- Stop sale order, §2-19-211.
- Unregistered fertilizers.
- Sale prohibited, §2-19-203.

Sampling fertilizers.

- Inspectors of plant board to obtain samples, §2-19-207.

Specialty fertilizers.

- Defined, §2-19-202.
- Primary plant food minimum unit requirements.
- Exception, §2-19-202.
- Registration, §2-19-202.

Stop sale order.

- Authority of board, §2-19-211.

FERTILIZERS —Cont'd**Superphosphates.**

Exempted transactions, §2-19-204.

Tonnage reports, §2-19-209.**Violations.**

Selling or offering for sale materials in violation of act, §2-19-201.

FESTIVALS.**Beer festival permits, §3-5-105.****FIDDLE.****State musical instrument, §1-4-113.****FIDUCIARIES.****Alcoholic beverages.**

Continuation of permitted business, §3-4-103.

Sale by fiduciaries, §3-4-104.

FINANCE AND ADMINISTRATION DEPARTMENT.**Catfish promotion board.**

General provisions, §§2-9-101 to 2-9-112.

Director.

Alcoholic beverages.

Beer and light wine.

Employment of additional administrative personnel to enforce subchapter, §3-5-225.

Wine.

Consent of grants.

Rules and regulations, §3-5-903.

FINES.**Agricultural cooperative associations, §2-2-202.**

Breach of contract, §2-2-118.

Agriculture.

Processing, grading, labeling and marketing, §2-20-403.

Alcoholic beverages, §3-3-102.

Beer and light wine, §3-5-221.

County and municipal retailers' permits, §3-5-212.

Classes of violations and fines, §3-4-402.

Denatured alcohol sales, §3-3-214.

Dram shop law, §3-3-209.

Dry territories, §§3-8-209, 3-8-312.

Excise taxes, §§3-7-103, 3-7-111.

Additional taxes, §3-7-111.

Federal license obtained without state license, §3-3-215.

Furnishing to alcoholics or intoxicated persons, §3-3-209.

Handling by minor, §3-3-204.

Local option, §3-8-310.

Minors.

Handling by, §3-3-204.

FINES —Cont'd**Alcoholic beverages —Cont'd****Minors —Cont'd**

Procuring liquor for another, §3-3-309.

Purchase or possession, §3-3-203.

Sales to, §3-3-201.

Nonresident beer sellers.

Violation of provisions, §3-5-1310.

Permits.

Authorization to impose fines, §3-4-401.

City and county licenses and taxes, §3-4-202.

County and municipal retailers, §3-5-212.

Issuance, §3-4-204.

Possession or procuring orders, §3-3-208.

Procuring liquor for another, §3-3-309.

Purchase or possession by minor, §3-3-203.

Retail establishments.

Violating local closing hours, §3-4-407.

Sale, barter or possession for sale or barter in dry area, §3-8-312.

Sale in dry territory, §3-8-209.

Unknowningly furnishing or selling to minor, §3-3-201.

Untaxed liquor, possession or sale, §3-3-216.

Beef.

Marketing, sale and transportation, §2-35-302.

Catfish promotion assessment.

Noncompliance, §2-9-111.

Catfish promotion board.**Assessments.**

Collection and remittance violations, §2-9-112.

Commercial bait and ornamental fish act.

Unlawful acts, §2-5-207.

Commercial feeds, §2-37-113.**Control of contagious diseases, §2-40-101.**

Cattle quarantine lines, §2-40-1001.

Transportation or drifting of cattle across lines, §2-40-1004.

Cooperative marketing associations.

Breach of contract, false reports, spreading, §2-2-420.

Corn and grain sorghum promotion, §2-20-802.**Cotton.**

Insecticides or poisons.

Date stamped on bag, failure to comply, §2-16-102.

FINES —Cont'd**Hogs.**

Releasing feral hogs into the wild,
§2-38-504.

Irrigation discharge.

Discharge of center pivot irrigation
water onto highways, §2-1-101.

Liming materials.

Violations of act, §2-19-302.

Livestock.

Disposition of, §2-33-113.

Marketing, sale and transportation.

Filing and acknowledgment of
record, §2-35-208.

Nurseries.

Agriculture, §2-21-104.

Plant disease and pest control,

§§2-16-203, 2-16-404.

Johnson grass, §2-16-503.

Prosecution, §2-16-304.

Processing, grading, labeling and marketing.

Refusing to gin cotton, §2-20-204.

Rice promotion, §2-20-504.

Wheat promotion, §2-20-603.

Seeds, §2-18-102.**FINGERPRINTING.****Alcoholic beverage permit applicants.**

Submission of fingerprints, §3-2-103.

FIRE ANT ADVISORY BOARD.

Chairpersons, §2-16-703.

Creation, §2-16-701.

Meetings, §2-16-703.

Members, §2-16-702.

Regulations, §2-16-704.

Reports, §2-16-705.

FIRE ANT POISON COST SHARING PROGRAM.

Creation, §2-16-105.

Quarantine costs.

Recovery, §2-16-106.

Rules and regulations, §2-16-107.

FIREFIGHTER RECOGNITION DAY, §1-5-115.**FIREFIGHTERS.**

Firefighter recognition day, §1-5-115.

FIRES AND FIRE PREVENTION.**Alcoholic beverages.**

Beer involved in fire, wreck or
casualty.

Labeling of beer, §3-4-104.

FISH AND GAME.

Catfish processor fair practices,
§§2-6-101 to 2-6-107.

FISH AND GAME —Cont'd

Catfish promotion board, §§2-9-101 to
2-9-112.

FISHING.

Commercial bait and ornamental
fish act, §§2-5-201 to 2-5-208.

Farms.

Farm raised bait and ornamental fish,
§§2-5-201 to 2-5-208.

FLAGS.**General assembly.**

Death of members.

Lowering of state flag, §1-4-103.

Governor.

Death of governor.

Executive proclamation, §1-4-103.

Lowering of state flag, §1-4-103.

Salute to state flag, §1-4-102.

Secretary of state.

Purchase of flags for distribution,
§1-4-104.

Provisions in lieu of other flag
distribution laws, §1-4-104.

State flag.

Death of public officials.

Lowering of state flag, §1-4-103.

Description, §1-4-104.

Legislative declaration, §1-4-101.

Lowering of state flag.

Death of public officials, §1-4-103.

Executive proclamation, §1-4-103.

Salute to state flag, §1-4-103.

Supreme court.

Lowering of state flag.

Death of members of supreme court,
§1-4-103.

FLOWERS.

State flower, §1-4-109.

FOLK DANCE.**State folk dance.**

Square dance, §1-4-120.

FORFEITURES.**Livestock.**

Running at large.

Forfeiture to taker up, §2-38-120.

FORGERY.**Boll weevil suppression and eradication.**

Certificates, permits or other
documents provided in
subchapter.

Misdemeanor, §2-16-604.

FORMS.**Agriculture.**

Farm mediation, §2-7-203.

Mandatory mediation, §2-7-303.

FORMS —Cont'd**Agriculture —Cont'd**

Farm mediation —Cont'd

Voluntary mediation.

Application and request forms,
§2-7-301.**Catfish promotion board.**

Assessments.

Refund claim form, §2-9-110.

Seals and sealed instruments.

Official seals, §1-4-108.

Seeds.

Arbitration of defective seed claims.

Notice of mandatory arbitration,
§2-23-102.**FORT SMITH, CITY OF.****Northwest Purple Martin capital of
Arkansas.**

Designation, §1-4-121.

FRAUD.**Agriculture.**Nursery fraud act, §§2-21-101 to
2-21-113.**Alcoholic beverages.**

Beer retailers.

License application, §3-5-303.

Wine and beer on-premises licenses.

Grounds for disciplinary action,
§§3-9-603, 3-9-604.**Nursery fraud act, §§2-21-101 to
2-21-113.****FRUIT.****Alcoholic beverages.**

Wine.

Importing natural fruit flavors and
herb flavors for production of
native wine, §3-5-604.

Subject to tax, §3-5-605.

**Labeling of fruits and vegetables for
interstate shipment, §§2-20-301 to
2-20-310.****State fruit and vegetable.**State of Arkansas vine ripe pink
tomato, §1-4-115.**FUNDS.****Alcoholic beverages.**

Beer.

Disposition of funds, §3-5-224.

Special retail tax.

Disposition of funds, §3-7-205.

Wine.

Incentive grants.

Agricultural marketing grants
fund.Establishment and use,
§3-5-908.**FUNDS —Cont'd****Alcoholic beverages —Cont'd**

Wine —Cont'd

Light wine.

Disposition of funds, §3-5-224.

Subsidies.

Wine grape, berry, fruit and
vegetable subsidy fund,
§3-5-1007.**Animals.**Small animal diagnostic testing,
§2-33-112.**Arkansas catfish promotion fund,
§2-9-112.****Brand registry fund.**

Created, §2-34-213.

Cattle.

Beef council fund.

Creation of fund, §2-35-308.

Use of funds to enhance cattle
industry, §2-35-309.**Commercial bait and ornamental
fish fund, §2-5-206.****Livestock.**

Brand registry fund.

Created, §2-34-213.

Federal Arkansas livestock and
poultry fund.

Creation, §2-33-114.

Transfer of funds from livestock and
poultry equine infectious
anemia control fund, §2-33-116.

Livestock marketing fund, §2-33-206.

Livestock spraying program fund,
§2-33-208.**Livestock and poultry commission.**Livestock and poultry special revenue
fund.

Established, §2-33-112.

Plant board fund.

Fire ant poison chemicals.

Monies generated from sale,
§2-16-105.Grain warehousing revenues,
§2-17-238.Operations and facilities construction
fund, §2-16-108.**G****GAMBLING.****Alcoholic beverage permitted
premises.**Gambling devices, gaming devices or
slot machines kept on.Prohibition, exception, charitable
organizations, §3-9-236.

GAME AND FISH.

Catfish promotion board, §§2-9-101 to 2-9-112.

Commission.

Domestic fish farming.
Powers of commission not affected,
§2-5-103.

Definitions.

Domestic fish farming, §2-5-102.

Domestic fish farming.

Agricultural pursuit.

Defined, §2-5-101.

Agriculture.

Defined, §2-5-101.

Cultivated crop.

Defined, §2-5-101.

Definitions, §§2-5-101, 2-5-102.

Domesticated fish.

Defined, §2-5-102.

Game and fish commission.

Powers not affected, §2-5-103.

Livestock.

Defined, §2-5-101.

GATES.

Willful injury or damage to gate or fence of another.

Liability, §2-39-111.

GEM OF STATE, §1-4-111.

GENDER.**Statutes.**

Masculine gender includes feminine,
§1-2-203.

GENERAL ASSEMBLY.**Bills.**

Clear and unambiguous language.
Required, §1-2-121.

Flags.

Death of members.
Lowering of state flag, §1-4-103.

GENERAL DOUGLAS MACARTHUR DAY.

Commemoration on proclamation,
§1-5-106.

GEORGE WASHINGTON'S BIRTHDAY.

Official holiday, §1-5-101.

GIFTS.**Johnson grass control board.**

Acceptance, §2-16-510.

GINSENG.**Artificial propagation.**

Fee, §2-20-705.

Certificate.

Exports.
Required, §2-20-702.

GINSENG —Cont'd**Dealers.**

Licenses, §2-20-704.

Fee, §2-20-704.

Registration required, §2-20-702.

Exports.

Certificate.

Required, §2-20-702.

Fees.

Artificial propagation fee, §2-20-705.

Dealers.

Licenses, §2-20-704.

Harvesting season.

Establishment authorized, §2-20-702.

Licenses.

Dealers, §2-20-704.

Fee, §2-20-704.

Plant board.

Authority to regulate ginseng,
§2-20-701.

Research program.

Generally, §2-20-703.

Rules and regulations.

Promulgation by board authorized,
§2-20-702.

Regulation.

Plant board authorized to regulate,
§2-20-701.

Research program.

Generally, §2-20-703.

Rules and regulations.

Plant board.

Promulgation by board authorized,
§2-20-702.

GOATS.

Animals named in act include those dead or alive, §2-35-201.

Brands and marks.

General provisions, §§2-34-101 to 2-34-213.

Carriers.

Transfer record.

Receiving without copy of transfer
record, §2-35-209.

Notice.

Running at large.

Sufficiency of notice to owner,
§2-38-303.

Perjury.

Transfer records, §2-35-207.

Sales.

Bill of sale.

Required, §2-35-212.

Transportation.

Transfer record.

Acknowledgments.

Fees of person taking
acknowledgment of transfer
records, §2-35-208.

GOATS —Cont'd**Transportation —Cont'd**

Transfer record —Cont'd

Form, §2-35-205.

Inspection, §2-35-210.

Perjury.

Applicability to records, §2-35-207.

Receiving without copy, §2-35-209.

GOOD FRIDAY.**Commemoration on proclamation,**

§1-5-106.

GOVERNOR.**Agriculture.**

Emergency plant act.

Proclamation of quarantine,

§2-16-307.

Death.

Lowering of state flag, §1-4-103.

Flags.

Lowering of state flag.

Death of governor, §1-4-103.

Executive proclamation, §1-4-103.

Poet laureate of state.

Appointment, §1-4-114.

Quarantine.

Emergency plant act.

Proclamation of governor, §2-16-307.

GRAIN.**Administrative procedure.**

Public grain warehouses.

Receiver for grains stored in.

Applicability of administrative
procedure act to actions of
commissioner, §2-17-408.**Assets.**

Public grain warehouses.

Required assets, §2-17-217.

Bankruptcy.

Public grain warehouses.

Duty of commissioner upon
bankruptcy of warehouseman,
§2-17-236.**Commercial code.**

Public grain warehouses.

Relationship to code, §2-17-203.

Definitions.

Public grain warehouses, §2-17-202.

Receivers for grain stored in public
warehouses, §2-17-401.Title to grain stored in public
warehouses, §2-17-301.**Explosions.**

Public grain warehouses.

Insurance against loss of grain due
to disaster, §2-17-218.**Hearings.**

Public grain warehouses.

Denial of license, §2-17-211.

GRAIN —Cont'd**Hearings —Cont'd**

Public grain warehouses —Cont'd

Receivers for grains stored in public
warehouses.Hearing on petition filed by
commissioner, §2-17-404.**Insurance.**

Public grain warehouses.

Insurance against loss of grain due
to disaster, §2-17-218.

Required assets, §2-17-217.

Joinder.Receiver for grain stored in public
warehouses.Surety joined as defendant by
commissioner, §2-17-409.**Liens.**

Public grain warehouses.

Receiver for grain stored in.

Distribution of grain or proceeds
without regard to storage lien
or charge, §2-17-412.**Newspapers.**

Public grain warehouses.

Receiver for grains stored in public
warehouse.Publication of appointment,
§2-17-406.**Notice.**

Public grain warehouses.

Receiver for grain stored in public
warehouses.Notice of hearing on petition filed
by commissioner, §2-17-404.Receiver for grain stored in public
warehouses.Notice to holders of warehouse
receipts or unpriced scale
tickets, §2-17-405.**Orders.**Receivers for grain stored in public
warehouses.Issuance of temporary orders by
court, §2-17-402.**Parties.**

Public grain warehouses.

Receiver for grains stored in.

Holders of warehouse receipts or
unpriced scale tickets not
parties, §2-17-405.Surety joined as party defendant,
§2-17-409.**Penalties.**

Public grain warehouses.

Violations, §2-17-204.

GRAIN —Cont'd**Petitions.**

Receivers for grain stored in public warehouses.

Appointment of commissioner as receiver, §2-17-402.

Plant board.

Public grain warehouses, §2-17-205.

Publications.

Receiver for grains stored in public warehouses.

Appointment of receivers, §2-17-406.

Public grain warehouses.

Acceptance for shipment, §2-17-231.

Applicability of act, §2-17-203.

Assets.

Deficiencies in net assets made up by increase in amount of bonds, §2-17-210.

Required assets, §2-17-217.

Bankruptcy.

Duty of commissioner upon bankruptcy of warehouseman, §2-17-236.

Bonds, surety.

Aggregate liability of surety, §2-17-209.

Amount, §2-17-210.

Deficiencies in net assets.

Increasing amount of bonds, §2-17-210.

Posting securities in lieu of bonds, §2-17-209.

Required, §2-17-209.

Capital stock, §2-17-217.

Commercial code.

Relationship, §2-17-203.

Commissioner.**Bankruptcy.**

Duty upon bankruptcy of warehouseman, §2-17-236.

Defined, §2-17-202.

Examinations, §2-17-235.

Inspections, §2-17-235.

Scales.

Testing scales, §2-17-235.

Condition of grain.

Acceptance of grain adversely affecting other grain, §2-17-233.

Cooperatives.

Declining tendered grain, §2-17-219.

Definitions, §§2-17-202, 2-17-301.

Delivery of grain.

Procedure in event of nondelivery, §2-17-226.

Disasters.**Insurance.**

Loss of grain due to disaster, §2-17-218.

GRAIN —Cont'd**Public grain warehouses —Cont'd**

Discontinuance of business, §2-17-237.

Disposition of revenues, §2-17-238.

Examinations.

Commissioner to examine, §2-17-235.

Costs, §2-17-235.

Fees.**Licenses.**

Annual license fee, §2-17-213.

Felonies.

Issuance of receipt without license, §2-17-204.

Financial statements.

Copies submitted with application for license renewal, §2-17-235.

Grade of grain.

Agreements between depositors and public grain warehouseman, §2-17-219.

Inspections.

Commissioners, §2-17-235.

Inspectors.

Duties, §2-17-232.

Employment, §2-17-232.

Insurance.

Determining total available net assets, §2-17-217.

Loss of grain due to disaster, §2-17-218.

Payment of claims, §2-17-218.

Licenses.

Acquisition of new or existing warehouse, §2-17-207.

Annual fee, §2-17-213.

Applications, §2-17-207.

Bonds required, §2-17-209.

Denial, §2-17-211.

Duplicates.

Replacement of lost or destroyed license, §2-17-216.

Failure to license, §2-17-207.

Federal licensee exceptions, §2-17-206.

Filing copies with plant board, §2-17-206.

Financial statements.

Submitting copies with license renewal, §2-17-235.

Fraud.

Conviction of crime involving fraud or deceit.

Suspension, cancellation or revocation of license, §2-17-215.

Hearings.

Denial, §2-17-211.

GRAIN —Cont'd**Public grain warehouses —Cont'd****Licenses —Cont'd**

Issuance, §2-17-211.

Lost or destroyed license.

Replacement, §2-17-216.

Multiple warehouses in one city,
§2-17-207.

Posting, §2-17-212.

Receivers, §§2-17-401, 2-17-402.

Renewal, §2-17-214.

Required, §2-17-206.

Suspension, cancellation or
revocation.

Grounds, §2-17-215.

Review, §2-17-215.

Transferability, §2-17-207.

Warehouse receipts.

Issuance of receipts without
license, §2-17-204.**Misdemeanors.**Unintentional or negligent
violations, §2-17-204.**Notice.**Discontinuance of business,
§2-17-237.**Partial delivery of grain.**

Delivery of stored grain.

Return of warehouse receipt,
§2-17-228.

Procedure, §2-17-227.

Penalties.

Violations, §2-17-204.

Person.

Defined, §2-17-202.

Plant board.

Duties, §2-17-205.

Enforcement of act, §2-17-205.

Quality of grain.

Duty to maintain, §2-17-233.

Rates and charges.Schedule of charges to be filed and
posted, §2-17-208.**Receivers.**

Administrative procedure.

Applicability of administrative
procedure act, §2-17-408.**Appointment.**Publication of appointment,
§2-17-406.**Bonds, surety.**Payment into court on discharge,
§2-17-409.Right of reimbursement of
commissioner constitutes
claim against surety,
§2-17-414.**GRAIN —Cont'd****Public grain warehouses —Cont'd****Receivers —Cont'd****Bonds, surety —Cont'd**Surety to be joined as party
defendant, §2-17-409.**Claims.**Failure to file timely claim,
§2-17-410.

Time for filing, §2-17-410.

Commissioner.Applicability of administrative
procedure act to actions of
commissioner, §2-17-408.

Defined, §2-17-401.

Delegation of commissioner's
authority, §2-17-407.Employees appearing on behalf of
commissioner, §2-17-407.Employment of merchandiser for
sale of stored grain, §2-17-411.

Final report, §2-17-416.

Petition that commissioner be
appointed receiver, §2-17-402.Reimbursement of expenses,
§2-17-414.Temporary continuation of
operation, §2-17-413.**Definitions, §2-17-401.**Delegation of commissioner's
authority, §2-17-407.**Disposition of grain.**

Plan for disposition, §2-17-403.

Distribution of grain or proceeds.Distribution without regard to
setoff, counterclaim or storage
lien or charge, §2-17-412.**Expenses.**

Priority of claims, §2-17-414.

Reimbursement of commissioner
for expenses, §2-17-414.**Hearings.**

Notice of hearing, §2-17-404.

Petitions, §2-17-404.

Licenses.

Defined, §2-17-401.

Suspension or revocation.

Petition that commissioner be
appointed receiver after
suspension or revocation of
warehouse license,
§2-17-402.**Liens.**Distribution without regard to
storage lien or charge,
§2-17-412.**Merchandisers.**Employment by commissioner,
§2-17-411.

GRAIN —Cont'd**Public grain warehouses —Cont'd**

Receivers —Cont'd

Merchandisers —Cont'd

Qualifications, §2-17-411.

Newspapers.

Publication of appointment,
§2-17-406.

Notice.

Failure to receive notice.

Proceedings not invalidated,
§2-17-405.

Hearing on petition, §2-17-404.

Holders of warehouse receipts or
unpriced scale tickets,
§2-17-405.Persons holding warehouse
receipts, §2-17-410.

Orders.

Issuance of temporary orders,
§2-17-402.

Parties.

Persons referred in section not
parties to action, §2-17-405.Surety joined as party defendant,
§2-17-409.

Petitions.

Appointment of commissioner as
receiver, §2-17-402.

Failure to receive notice.

Proceedings not invalidated,
§2-17-405.

Hearings, §2-17-404.

Notice of hearing on petition,
§2-17-404.Plan for disposition of grain to
accompany petition,
§2-17-403.Plan for disposition of grain,
§2-17-403.

Approval, §2-17-415.

Distribution of grain or proceeds,
§2-17-412.

Execution, §2-17-415.

Submission to court, §2-17-415.

Publication of appointment,
§2-17-406.

Reports.

Final report of commissioner,
§2-17-416.

Sales.

Commissioner to employ
merchandise, §2-17-411.Distribution of grain or proceeds,
§2-17-412.

Service of process.

Hearing on petition.

Delay in service, §2-17-404.

GRAIN —Cont'd**Public grain warehouses —Cont'd**

Receivers —Cont'd

Temporary continuation of business.

Authority of commissioner,
§2-17-413.

Time.

Filing claims, §2-17-410.

Unpriced scale tickets.

Notice to holders, §§2-17-405,
2-17-410.

Warehouse receipts.

Notice to holders, §§2-17-405,
2-17-410.

Warehouses.

Defined, §2-17-401.

Records.

Public inspection, §2-17-235.

Required, §2-17-234.

Retention, §2-17-234.

Revenues.

Disposition, §2-17-238.

Samples, §2-17-219.

Scales.

Test of scales, §2-17-235.

Schedule of charges.

Filing and posting, §2-17-208.

Short title of act, §2-17-201.

Storage of all tendered grain,
§2-17-219.

Stored grain.

Defined, §2-17-202.

Title of act, §2-17-201.

Title to grain stored in public
warehouses.

Applicability of act, §2-17-302.

Definitions, §2-17-301.

Delivery of grain.

Ownership not changed,
§2-17-303.

Owners.

Defined, §2-17-301.

Waiver of rights, §2-17-304.

Waiver of rights, §2-17-304.

Violations.

Penalties, §2-17-204.

Unintentional or negligent
violations, §2-17-204.

Warehouse receipts.

Acceptance of grain for shipment,
§2-17-231.

Commercial code.

Relationship to uniform
commercial code, §2-17-203.

Contents, §2-17-221.

Copies.

Nonnegotiable, §2-17-224.

Defined, §2-17-202.

GRAIN —Cont'd**Public grain warehouses —Cont'd****Warehouse receipts —Cont'd**

Form, §2-17-222.

Issuance without license, §2-17-204.

Negotiability.

Copy of receipts nonnegotiable,
§2-17-224.

Nondelivery of grain.

Procedure, §2-17-226.

Numbering, §2-17-223.

Partial delivery of grain.

Procedure, §2-17-227.

Period for which grain accepted,
§2-17-221.Pledges by warehouseman,
§2-17-230.Printing and distribution costs,
§2-17-222.

Quantity of grain.

Receipts to accurately reflect,
§2-17-225.

Required, §2-17-220.

Return of receipt.

Delivery of stored grain,
§2-17-228.Sale or pledge of receipts by
warehouseman, §2-17-230.

Signatures.

Verification for delivery of grain
under nonnegotiable receipts,
§2-17-229.**Records.**

Public grain warehouses.

Maintenance of records, §2-17-234.

Reports.Receiver for grain stored in public
warehouses.Final report of commissioner,
§2-17-416.**Service of process.**

Public grain warehouses.

Receiver for grains stored in.

Notice of hearing on petition filed
by commissioner.

Delay in service, §2-17-404.

State grain, §1-4-127.**Time.**Receiver for grain stored in public
warehouse.

Filing claims, §2-17-410.

Venue.

Public grain warehouses.

Suspension, cancellation or
revocation of license, §2-17-215.**Warehouses.**

Misdemeanors.

Unintentional or negligent
violations, §2-17-204.**GRAIN —Cont'd****Weights and measures.**

Public grain warehouses.

Test of scales, §2-17-235.

GRAND JURY.**Alcoholic beverages.**

Local option elections.

1935 act proceedings.

Charge to grand jury.

Act to be given, §3-8-316.

GRANTS.**Alcoholic beverages.**

Wine.

Incentive grants, §§3-5-901 to
3-5-908.**Wine.**

Incentive grants, §§3-5-901 to 3-5-908.

GRASS.**Johnson grass.**Control and eradication, §§2-16-501 to
2-16-511.**Turf grass.**

Certification by board, §2-16-109.

GROSS RECEIPTS TAX.**Alcoholic beverages.**Caterer's off-premises permits,
§3-4-904.**GUARDIANS.****Cattle.**Brands of minors owning cattle
separate from guardian,
§2-34-103.**Hogs.**Brands of minors owning hogs
separate from guardian,
§2-34-103.**H****HATTIE W. CARAWAY DAY, §1-5-106.****HEALTH.****Health data clearinghouse.**

Release of health data, §2-7-304.

HEARINGS.**Alcoholic beverages.**

Board of alcoholic beverage control.

Conduct of hearing on appeal before
board, §3-2-215.

Permits.

Applications, §3-4-208.

Wholesale dealers and distributors.

Request to change wholesalers,
§§3-2-405, 3-2-406.**Brucellosis.**

Depopulation of herds, §2-40-210.

HEARINGS —Cont'd**Grain.**

- Public grain warehouses.
- Denial of license, §2-17-211.
- Receivers for grains stored in public warehouses.
- Hearing on petition filed by commissioner, §2-17-404.

Seeds.

- Arbitration of defective seed claims.
- Arbitration committee.
- Informal hearing, §2-23-106.
- Investigative powers, §2-23-108.

HEMOPHILIA AWARENESS DAY,
§1-5-116.**HIGHWAYS.****Irrigation.**

- Discharge of center pivot irrigation water onto highways, §2-1-101.

HISPANIC PEOPLE.**Minorities in Arkansas.**

- Adding Hispanics to definition, §1-2-502.

HOGS.**Carriers.**

- Transfer record.
- Receiving without copy, §2-35-209.

Cholera.

- Cleaning and disinfecting of premises, vehicles, etc., infected, §2-40-708.

Definitions.

- Hog cholera virus, §2-40-701.

Disposal of carcasses, §2-40-707.**Penalties.**

- Violations of provisions, §2-40-702.

Quarantine.

- Herds infected with or exposed to hog cholera, §2-40-706.

Reports.

- Duty to make report, §2-40-704.

Investigations, §2-40-705.**Rules and regulations, §2-40-703.**

- Slaughter of healthy swine exposed to cholera, §2-40-707.

Dead hogs.

- Hog cholera.
- Disposal of carcasses, §2-40-707.

Definitions.

- Cholera.
- Hog cholera virus, §2-40-701.
- Feral hogs, §2-38-501.

Feeder pig and feeder calf grading program, §2-33-204.**Feral hogs, §§2-38-501 to 2-38-504.**

- Animal health requirements, §2-38-503.

HOGS —Cont'd**Feral hogs —Cont'd**

- Definitions, §2-38-501.
- Hunting, §2-38-502.
- Releasing hogs into the wild, §2-38-504.

Guardians.

- Brands of minors owning hogs separate from guardian, §2-34-103.

Investigations.**Cholera.**

- Investigation of report, §2-40-705.

Marks and brands.

- General provisions, §§2-34-101 to 2-34-213.

Minors.

- Brands of minors owning hogs separate from father or guardian, §2-34-103.

Motor vehicles.**Hog cholera.**

- Cleaning and disinfecting of vehicles infected with hog cholera, §2-40-708.

Notice.

- Running at large.
- Sufficiency of notice to owner, §2-38-303.

Perjury.

- Transfer records, §2-35-207.

Quarantine.

- Herds infected with or exposed to hog cholera, §2-40-706.

Records.**Transportation.**

- One county to another, §2-35-204.

Reports.**Cholera.**

- Duty to report, §2-40-704.
- Investigation of hog cholera report, §2-40-705.

Rules and regulations.**Cholera.**

- Livestock and poultry commission, §2-40-703.

Running at large.

- Feral hogs, §2-38-504.

Sales.

- Bill of sale.
- Required, §2-35-212.

Stray domestic hogs.

- Adjacent landowners.
- Notice requirements, §2-38-501.

Transportation.

- One county to another.
- Records, §2-35-204.

HOGS —Cont'd**Transportation —Cont'd****Transfer record.**

Contents, §2-35-204.

Copies filed with clerk, §2-35-208.

Filing with person taking
acknowledgment, §2-35-208.

Form, §2-35-205.

Inspection, §2-35-210.

Penalty for violations, §2-35-203.

Perjury.

Applicability to record, §2-35-207.

Receiving livestock without copy,
§2-35-209.

Verification, §2-35-206.

HOLIDAYS AND MEMORIAL DAYS.**Arbor day**, §1-5-106.**Arkansas bird day**, §1-5-106.**Arkansas teachers day**, §1-5-106.**Bird day**, §1-5-106.**Christmas day.**

Official holiday, §1-5-101.

Sale of intoxicating liquor on
Christmas prohibited, §3-3-211.**Christmas Eve.**

Official holiday, §1-5-101.

Columbus day, §1-5-106.**Commercial paper.**

Payable day after holiday, §1-5-105.

Compensation.

State employees.

Entitlement to paid holiday or
equivalent time, §1-5-104.**Confederate Flag day**, §1-5-107.**Daisy Gatson Bates day**, §1-5-101.**Dr. Martin Luther King, Jr.'s
birthday.**

Official holiday, §1-5-101.

Firefighter recognition day, §1-5-115.**General Douglas MacArthur day**,
§1-5-106.**George Washington's birthday.**

Official holiday, §1-5-101.

Good Friday, §1-5-106.**Hemophilia awareness day**, §1-5-116.**Independence day.**

Official holiday, §1-5-101.

Jefferson Davis' birthday, §1-5-106.**Juneteenth independence day**,
§1-5-114.**Labor day.**

Official holiday, §1-5-101.

Lincoln's birthday, §1-5-106.**Memorial day.**

Official holiday, §1-5-101.

Memorial days generally.

Not official holidays, §1-5-106.

HOLIDAYS AND MEMORIAL DAYS**—Cont'd****Memorial days generally —Cont'd**

Schedule, §1-5-106.

National garden week, §1-5-110.**Native American heritage week**,
§1-5-113.**New Year's day.**

Official day, §1-5-101.

Patriots' day, §1-5-106.**POW/MIA day**, §1-5-112.**Prisoners of War Remembrance Day**,
§1-5-109.**Robert E. Lee's birthday.**

Official holiday, §1-5-101.

Rules and regulations.

Official holidays, §1-5-101.

Saturdays.Holidays on Saturdays to be observed
on preceding Friday, §1-5-101.**Senator Hattie W. Caraway day**,
§1-5-106.**Silas Hunt day**, §1-5-106.**State employee's birthday.**

Official holiday, §1-5-101.

State offices.

Closing on holidays, §1-5-102.

Other state office closings by
proclamation unaffected,
§1-5-103.**Sundays.**Official holidays falling on Sunday to
be observed on succeeding
Monday, §1-5-101.**Teachers' day**, §1-5-106.**Thanksgiving day.**

Official holiday, §1-5-101.

Universities and colleges.Employees of institutions of higher
learning.Working on holidays may be
required, §1-5-102.**Veterans day.**

Official holiday, §1-5-101.

HONEY.**Bees and honey.**General provisions, §§2-22-101 to
2-22-112.**HONEYBEE.****State insect**, §1-4-110.**HORSES.****Carriers.**

Transfer record.

Receiving without copy, §2-35-209.

Definitions.

Equine infectious anemia, §2-40-801.

HORSES —Cont'd**Equine infectious anemia.**

Approved markets.

Movement of equidae through,
§2-40-820.

Approved slaughter facility.

Entry requirements, §2-40-825.

Change of ownership.

Testing requirements, §2-40-819.

Citizen reporting.

Suspected untested horse, §2-40-828.

Definitions, §2-40-801.

Entry into Arkansas.

Requirements for equidae entering
Arkansas, §2-40-822.

Equine activities.

Defined, §2-40-801.

Requirements of equidae
participating in, §2-40-821.Verification of negative test results
at events, §2-40-821.

Erroneous information, §2-40-818.

Fictitious names, §2-40-818.

Identification requirements for
equidae, §2-40-805.

Livestock and poultry commission.

Fees, §2-40-826.

Orders, §2-40-803.

Rules and regulations, §2-40-803.

Misdemeanors, §2-40-802.

Movement of equidae through
approved market, §2-40-820.

Movement of equidae within state.

Requirements, §2-40-823.

Movement of reactors and exposed
animals, §2-40-816.

Quarantine, §2-40-812.

Quarantined holding facilities.

Requirements for, §2-40-817.

Reactors, §2-40-813.

Racetracks.

Positive reactors at official
racetracks, §2-40-814.

Reactors.

Defined, §2-40-801.

Movement, §2-40-816.

Positive reactors at official
racetracks, §2-40-814.

Quarantining, §2-40-813.

Reports.

Test results, §2-40-811.

Research facilities.

Prevention of infection, §2-40-829.

Rules and regulations, §2-40-803.

Slaughter facility.

Entry requirements to approved
slaughter facility, §2-40-825.**HORSES —Cont'd****Equine infectious anemia —Cont'd**

Suspected untested horse.

Citizen reporting, §2-40-828.

Tests.

Affected herds, §2-40-815.

Approved EIA testing laboratories.

Requirement, §2-40-809.

Authority to require test, §2-40-806.

Blood samples.

Personnel authorized to collect,
§2-40-807.

Change of ownership, §2-40-819.

Classification of equidae tested,
§2-40-810.

Domiciled equidae, §2-40-804.

Entry into Arkansas.

Requirements for equidae entering
Arkansas, §2-40-822.

Movement of equidae within state.

Requirements, §2-40-823.

Reporting of results, §2-40-811.

Submission of sample and test
charts, §2-40-808.Verification of negative test results at
events, §2-40-821.

Veterinarian's clinic.

Entry requirements for care and
treatment, §2-40-824.**Equine monitoring through
identification chips, §2-32-301.****Estrays.**

Compensation for keeping, §2-38-117.

Fences.General provisions, §§2-39-101 to
2-39-111.**Perjury.**

Transfer records, §2-35-207.

Quarantine.

Equine infectious anemia, §2-40-812.

Quarantined holding facilities.

Requirements for, §2-40-817.

Reactors, §2-40-813.

Records.

Transportation.

One county to another, §2-35-204.

Reports.

Equine infectious anemia.

Test results, §2-40-811.

Rules and regulations.

Equine infectious anemia, §2-40-803.

Stallions.

Right to kill stallions and jacks.

Notice, §2-38-203.

Running at large.

Right of person taking up,
§2-38-202.

HORSES —Cont'd**Transportation.**

One county to another.

Records, §2-35-204.

Transfer records.

Acknowledgments.

Fees of persons taking
acknowledgment on record,
§2-35-208.

Animals' names in act include those
dead or alive, §2-35-201.

Contents, §2-35-204.

Copy filed with county clerk,
§2-35-208.

Filing with person taking
acknowledgments, §2-35-208.

Form, §2-35-205.

Inspection, §2-35-210.

Penalties for violations, §2-35-203.

Perjury.

Applicability to records, §2-35-207.

Receiving without copy of record,
§2-35-209.

Verification, §2-35-206.

**HOTELS, INNS AND OTHER
TRANSIENT LODGING PLACES.**

Alcoholic beverages.

Complimentary bottle of wine.

Cabins and cottages, §3-5-106.

Cabins and cottages.

Complimentary bottle of wine,
§3-5-106.

HUNTING.

Feral hogs, §2-38-502.

Revoked licenses, §2-38-502.

I**IMMUNITY.****Fences.**

Damaging fence or gate of another,
§2-39-111.

Statutes.

Effect of adoption of code on existing
rights and liabilities, §1-2-111.

IMPEACHMENT.**Circuit courts.**

Alcoholic beverages.

Enforcement of liquor laws,
§3-2-302.

IMPORTS.**Alcoholic beverages.**

Methods of identifying liquors shipped
into state, §3-7-112.

Permits.

Transport permit must accompany
permit, §3-7-106.

IMPORTS —Cont'd**Alcoholic beverages —Cont'd**

Wine.

Importing natural fruit flavors for
production, §§3-5-604, 3-5-605.

IMPOUNDMENT.**Cattle.**

Quarantine.

Impounding stock across quarantine
line, §2-40-1005.

IMPROVEMENT DISTRICTS.**Newspapers.**

Commissioners of special improvement
districts.

Annual reports to be published,
§1-3-105.

Publication.

Commissioners of special improvement
districts.

Annual reports to be published,
§1-3-105.

INCOME TAX.**Agriculture.**

Biotechnology development and
training.

Tax credits, §§2-8-103 to 2-8-108.

Biotechnology development and training.

Tax credits, §§2-8-103 to 2-8-108.

Credits.

Agriculture.

Biotechnology development and
training, §§2-8-103 to 2-8-108.

Biotechnology development and
training, §§2-8-103 to 2-8-108.

INDEPENDENCE DAY.

Official holiday, §1-5-101.

INDICTMENTS.**Alcoholic beverages.**

Local option elections.

1935 act proceedings, §3-8-313.

INITIATIVE AND REFERENDUM.**Alcoholic beverages.**

Sunday beer and wine permits.

Hotels and restaurants, §3-9-506.

Boll weevil suppression and eradication.

Assessment levied upon cotton
growers.

Referendum, §2-16-614.

Conduct, §2-16-615.

Subsequent referendums,
§2-16-616.

Soybeans.

Promotion.

Assessments, §2-20-406.

INJUNCTIONS.**Alcoholic beverages.**

Wholesalers' protection from arbitrary actions of suppliers.

Injunctive relief for violations,
§3-5-1106.

Boll weevil suppression and eradication.

Destruction of cotton.

Failure to pay assessments.
Cotton not destroyed,
§2-16-617.

Catfish processor fair practices,
§2-6-106.**Cooperative marketing associations.**

Breach of marketing contract,
§2-2-419.

Corn and grain sorghum promotion,
§2-20-802.**Johnson grass.**

Duty of prosecuting attorney to enjoin nuisance, §2-16-508.

Landowners.

Authority to bring civil action for injunction, §2-16-508.

Livestock or poultry production contracts.

Violations, §2-32-201.

Rice certification act.

Relief authorized, §2-15-206.

Soil amendment.

Violations of provisions, §2-19-413.

Soybeans.

Promotion.

Persons owing assessments or penalties.

Enjoining from operating business, §2-20-403.

INSECTS.**State insect,** §1-4-110.**INSPECTIONS.****Agriculture.**

Emergency plant act.

Rights of inspection, §2-16-306.
Fees.

Board may require payment,
§2-16-209.

Fruits and vegetables for interstate shipment, §2-20-310.

Sale, shipment or disposal of plants or products.

Certificate of inspection required,
§2-16-210.

INSPECTIONS —Cont'd**Alcoholic beverages.**

On-premises consumption, §3-9-232.

Sunday sales.

Inspection of books and records.

Consent to inspection
prerequisite to obtaining
permit, §3-9-406.

Records and reports of licensees,
§3-2-211.

Bees and honey.

Apiaries, §2-22-107.

Powers of inspectors, §2-22-106.

Standards for inspectors, §2-22-108.

Boll weevil suppression and eradication.

Authority of plant board, §2-16-607.

Cotton growers' organizations.

Books and records, §2-16-612.

Cattle.

Beef council.

Inspection of records and
regulations, §2-35-307.

Commercial feeds, §2-37-111.

Fees, §2-37-109.

Cotton.

Gins.

Failure to permit inspection of
records.

Penalty, §2-20-206.

Fertilizers.

Plant board, §2-19-209.

Waiver.

No protection to party selling or
offering unregistered fertilizer,
§2-19-203.

Johnson grass.

Eradication supervisor, §2-16-506.

Liming materials.

Authority of plant board, §2-19-307.

Pest control.

Fees, §2-16-209.

Sale, shipment or disposal of plants or
products.

Certificate of inspection required,
§2-16-210.

Pesticides.

Plant board, §2-16-406.

Right of entry of plant board,
§2-16-412.

Seeds.

Certificates of inspection, §2-18-106.

Fees, §2-18-105.

INSPECTIONS —Cont'd**Soil amendment.**

Authorized, §2-19-405.

Fees.

Payment to plant board, §2-19-410.

Soybeans.

Promotion.

Books and records, §2-20-407.

Refusal to allow full inspection of premises.

Misdemeanor, §2-20-403.

INSURANCE.**Alcoholic beverages.**

Sale by insurers, §3-4-104.

Grain.

Public grain warehouses.

Insurance against loss of grain due to disaster, §2-17-218.

Required assets, §2-17-217.

INTERSTATE COMMERCE.**Alcoholic beverages.**

Wine.

Bottling of local wines.

Sizes convenient for interstate or intrastate sale, §3-5-603.

Regulations established by director, §3-5-602.

Cattle.

Federal regulations exclusively govern interstate movement, §2-35-214.

Interstate shipping points, §2-35-215.

Fruits and vegetables.

Labeling for interstate shipment, §§2-20-301 to 2-20-310.

Livestock and poultry commission.

Cooperation with federal and state agencies, §2-33-305.

Movement of livestock or poultry in violation of regulations.

Misdemeanor, §2-33-110.

Wine.

Bottling of local wines.

Sizes convenient for interstate or intrastate sale, §3-5-603.

Regulations established by director, §3-5-602.

INTOXICATING LIQUORS.**General provisions,** §§3-1-101 to 3-9-307.**INVESTIGATIONS.****Hogs.**

Cholera.

Investigation of report, §2-40-705.

Livestock and poultry commission.

Hog cholera.

Investigation of report, §2-40-705.

INVESTIGATIONS —Cont'd**Seeds.**

Arbitration of defective seed claims.

Arbitration committee, §2-23-107.

Powers, §2-23-108.

Requests by dealers, §2-23-103.

Filing fee, §2-23-103.

Plant board, §2-18-103.

INVESTMENTS.**Agricultural cooperative associations.**

Reserves.

Power to establish and invest, §2-2-106.

Cooperative marketing associations.

Reserves.

Power to establish and invest, §2-2-406.

INVOICES.**Alcoholic beverages.**

Failure to pay invoices.

List of permit holders, §3-4-406.

IRRIGATION.**Discharge of center pivot irrigation water onto highways,** §2-1-101.**J****JEFFERSON DAVIS' BIRTHDAY.****Commemoration on proclamation,** §1-5-106.**JOHNSON GRASS.****Citation of act,** §2-16-501.**Control board.**

Acceptance of gifts, grants and donations, §2-16-510.

Appointment, §2-16-505.

Composition, §2-16-505.

Duties, §2-16-505.

Custodian of lands.

Duties, §2-16-509.

Damages.

Civil actions by landowners, §2-16-508.

Districts.

Abolition, §2-16-511.

Act applicable in areas established as districts, §2-16-502.

Powers and duties, §2-16-506.

Vote against establishment, §2-16-505.

Elections.

Abolition of districts, §2-16-511.

Ballots, §2-16-505.

Districts.

Vote against establishment of district, §2-16-505.

Qualifications of electors, §2-16-505.

JOHNSON GRASS —Cont'd**Elections —Cont'd**

Qualified voters, §2-16-505.

Results, §2-16-505.

Submission of question to electors,
§2-16-504.

Enforcement.

Act applicable in areas established as
districts, §2-16-502.

Eradication supervisor.

Inspections, §2-16-506.

Powers and duties, §2-16-506.

Selecting and employing, §2-16-505.

Failure to control or eradicate.

Penalty, §2-16-503.

Gifts.

Acceptance by control board
authorized, §2-16-510.

Injunctions.

Duty of prosecuting attorney to enjoin
nuisance, §2-16-508.

Landowners.

Authority to bring civil action for
injunction, §2-16-508.

Inspections.

Eradication supervisor, §2-16-506.

Nuisances.

Declared public nuisance, §2-16-508.

Injunctions, §2-16-508.

Owners.

Duty of owner, §2-16-509.

Petitions.

Submission to electors, §2-16-504.

Plant board.

Director.

Cooperation authorized, §2-16-507.

Refusal to control or eradicate.

Penalty, §2-16-503.

Title of act, §2-16-501.**Townships.**

Enforcement districts, §2-16-502.

JOINDER.**Grain.**

Receiver for grain stored in public
warehouses.

Surety joined as defendant by
commissioner, §2-17-409.

JUDGMENTS.**Livestock.**

Running at large.

Costs, §2-38-122.

Delinquency in payment by
taker-up, §2-38-121.

JUNTEENTH INDEPENDENCE

DAY, §1-5-114.

JURISDICTION.**Alcoholic beverages.**

Retail establishments.

Local closing hour violations,
§3-4-407.

L**LABELS.****Agriculture.**

Labeling of fruits and vegetables for
interstate shipment, §§2-20-301 to
2-20-310.

Alcoholic beverages.

Beer.

Label submission to division,
§3-2-409.

Sale in original labeled containers,
§3-5-220.

Distribution.

Acquisition of right to sell, ship or
distribute a label, §3-2-408.

Beer, malt products or light wine.

Label submission requirements,
§3-2-409.

Spirituuous and vinous beverages.

Registration of brands and labels,
§3-2-403.

Wine.

Light wine, §3-2-409.

Sacramental wine, §3-7-115.

Commercial feeds, §2-37-105.

Misbranding, §2-37-106.

Prohibited acts, §2-37-108.

Containers.

Fruits and vegetables.

Labeling for interstate shipment,
§§2-20-301 to 2-20-310.

Fruits.

Labeling of fruits and vegetables for
interstate shipment, §§2-20-301 to
2-20-310.

Interstate commerce.

Fruits and vegetables, §§2-20-301 to
2-20-310.

Liming materials.

Grades, §2-19-303.

Soil amendment.

Approval by board, §2-19-407.

Label defined, §2-19-402.

Requirements, §2-19-407.

Vegetables.

Labeling of fruits and vegetables for
interstate shipment.

General provisions, §§2-20-301 to
2-20-310.

Wine.

Sacramental wine, §3-7-115.

LABOR DAY.

Official holiday, §1-5-101.

LANGUAGE OF STATE.

English language declared official language, §1-4-117.

LAW ENFORCEMENT OFFICERS.**Alcoholic beverages.**

Enforcement of liquor laws, §3-2-209.

Authority, §3-2-210.

Cattle.

Quarantine.

Enforcing quarantine regulations,
§2-40-1005.

LEASES.**Agriculture.**

Agricultural foreign investment.

Exception for land used for mineral
leases, §2-3-110.

Mines and minerals.

Agricultural foreign investment.

Exception for land used for mineral
leases, §2-3-110.

LEGAL NOTICES AND**ADVERTISEMENTS.****Newspapers.**

Cost of publication.

Printing of publication cost,
§1-3-109.

Penalties for noncompliance,
§1-3-109.

LEGISLATIVE COUNCIL.**Bureau of legislative research.**

Code revision commission.

Transfer of commission property,
personal, records and
unexpended allocations to
bureau, §1-2-303.

Code revisor.

Employment by bureau, §1-2-302.

Executive director of code revision
commission to become, §1-2-303.

Employees of code revision
commission.

Transferred to bureau, §1-2-303.

LICENSES.**Agriculture.**

Grading of products and containers.

License of inspector, §2-20-109.

Commercial feeds, §2-37-104.**Fertilizers.**

Blending or bulk storage facilities,
§2-19-202.

Fees, §2-19-202.

Sale of fertilizers manufactured at
unlicensed facilities.

Prohibited, §2-19-203.

LICENSES —Cont'd**Fertilizers —Cont'd**

Blending or bulk storage facilities
—Cont'd

Standards and criteria.

Promulgation by plant board,
§2-19-202.

Ginseng.

Dealers, §2-20-704.

Fee, §2-20-704.

Liming materials.

Vendor's license.

Fee, §2-19-306.

Required, §2-19-306.

Municipal corporations.

Alcoholic beverages, §3-4-202.

LIENS.**Agriculture.**

Eradication of pests or diseases.

Failure to comply with notice,
§2-16-211.

Foreign investment.

Acquisition by enforcement of lien,
§2-3-105.

Alcoholic beverages.

License fees, §3-4-219.

Permit fees, §3-4-219.

Taxation.

Special retail tax.

Execution of lien, §3-7-203.

Procedure for obtaining lien,
§3-7-202.

**Boll weevil suppression and
eradication.**

Failure to pay assessments, §2-16-617.

**Fire ant poison cost sharing
program.**

Recovery of costs by plant board,
§2-16-106.

Grain.

Receiver for grain stored in public
warehouses.

Distribution of grain or proceeds
without regard to storage lien or
charge, §2-17-412.

Pest control.

Failure to comply with notice,
§2-16-211.

Notice.

Failure to comply with notice,
§2-16-211.

Plant board of state.

Fire ant poison cost sharing program.

Recovery of costs, §2-16-106.

LIMESTONE.**Agricultural liming materials,**

§§2-19-301 to 2-19-308.

LIMING MATERIALS.**Deficiencies.**

Penalties, §2-19-305.

Defined, §2-19-303.**Fees.**

Registration fee, §2-19-306.

Vendor's licenses, §2-19-306.

Fines.

Penalty for violation of article,
§2-19-302.

Inspections.

Authority of plant board, §2-19-307.

Labels.

Grades, §2-19-303.

Licenses.

Vendor's license.

Fee, §2-19-306.

Required, §2-19-306.

Penalties.

Deficiencies, §2-19-305.

Violations, §2-19-302.

Plant board.

Inspections, §2-19-307.

Rules and regulations, §2-19-308.

Sampling and analysis, §2-19-304.

Stop-sale order, §2-19-304.

Registration.

Contents, §2-19-306.

Expiration, §2-19-306.

Fees, §2-19-306.

Required, §2-19-306.

Reports.

Tonnage reports, §2-19-307.

Rules and regulations.

Plant board, §2-19-308.

Sampling and analysis.

Authority of plant board, §2-19-304.

Penalty for deficiency, §2-19-305.

Soil testing.

Funds, §2-19-307.

Stop-sale orders.

Plant board, §2-19-304.

Title of act, §2-19-301.**Vendors' licenses, §2-19-306.****Violations.**

Penalties, §2-19-302.

LIMITATION OF ACTIONS.**Statutes.**

Adoption of code not to toll limitations,
§1-2-112.

Tolling of statute.

Adoption of code not to toll limitations,
§1-2-112.

LINCOLN'S BIRTHDAY.**Commemoration on proclamation,**

§1-5-106.

LIVESTOCK.**Actions.**

Running at large.

Refusal to deliver to owner.

Right of action, §2-38-116.

Advertising.

Running at large.

Advertisements of taker-up to be
posted, §2-38-111.

Payment of expenses, §2-38-113.

Penalty for failure to advertise,
§2-38-111.

Publication in addition to posting,
§2-38-112.

Alternate livestock, §2-32-101.**Anthrax.**

Vaccine.

Sales.

Advice and consent of state
veterinarian, §2-40-108.

Appraisals.

Certificate of appraisal, §2-38-108.

Arkansas beef council, §§2-35-301 to 2-35-310.**Beef council, §§2-35-301 to 2-35-310.****Boards and commissions.**

Livestock and poultry commission,
§§2-33-101 to 2-33-401.

Bonds, surety.

Running at large.

Bond of taker-up, §2-38-109.

Record of bond of taker-up,
§2-38-110.

Brands and marks.

Age of branding and ear-marking,
§2-34-102.

Brand registry fund.

Created, §2-34-213.

Commission.

Defined, §2-34-201.

County clerks.

State brand book.

Distribution to clerk, §2-34-210.

Definitions, §2-34-201.

Director, §2-34-203.

Defined, §2-34-201.

Rules and regulations, §2-34-204.

Division of brand registry.

Creation, §2-34-203.

Defined, §2-34-201.

Records.

Custody of county brand records,
§2-34-205.

Drovers.

Duty to mark or brand stock driven
through state, §2-34-302.

Recording mark or brand, §2-34-303.

LIVESTOCK —Cont'd**Brands and marks —Cont'd**

Duplication.

Misdemeanor, §2-34-202.

What constitutes, §2-34-202.

Earmarks.

Age of ear-marking, §2-34-102.

Disputes concerning earmarks or brands, §2-34-106.

Recording, §2-34-101.

Evidence.

State brand book.

Prima facie evidence of ownership, §2-34-211.

Funds.

Disposition of funds collected, §2-34-213.

Guardians.

Brands of minors owning cattle separate from guardian, §2-34-103.

Minors.

Brands of minors owning cattle separate from guardian, §2-34-103.

Misdemeanors.

Duplication, §2-34-202.

Rebranding or remarking.

Witnesses, §2-34-105.

Records.

Clerks of county courts, §2-34-104.

Custody of county brand records, §2-34-205.

Division of brand registry.

Custody of county brand records, §2-34-205.

Duties of clerks of court, §2-34-104.

Earmarks and brands, §2-34-101.

Minors owning cattle separate from guardian, §2-34-103.

Registration, §2-34-208.

Applications, §2-34-208.

Transfer of registered brands, §2-34-212.

Reserved brands.

Brands reserved to state, §2-34-209.

Rules and regulations.

Director, §2-34-204.

Running at large.

Examination of record of marks and brands, §2-38-105.

State.

Brands reserved to state, §2-34-209.

State brand book, §2-34-206.

Distribution to county clerks and sheriffs, §2-34-210.

Evidence.

Prima facie evidence of ownership, §2-34-211.

LIVESTOCK —Cont'd**Brands and marks —Cont'd**

State brand book —Cont'd

Publication, §2-34-206.

Notification to registrants, §2-34-207.

Sale, §2-34-210.

Transfer of registered brands, §2-34-212.

Witnesses.

Rebranding or remarking purchased cattle, §2-34-105.

Carcass data service, §2-33-203.

Fees, §2-33-203.

Carriers.

Transfer record.

Receiving livestock without copy, §2-35-209.

Castration.

Method, §2-38-202.

Certificate of appraisalment,

§2-38-108.

Commercial feeds, §§2-37-101 to 2-37-114.**Commission.**

Livestock and poultry commission, §§2-33-101 to 2-33-401.

Contracts.

Production contracts.

Definitions, requirements, disputes, arbitration, violations, relief, §2-32-201.

Counties.

Running at large.

Impoundment of animals running at large.

Daily charges, §2-38-408.

Enclosure provided by county, §2-38-403.

Stray-pens.

Providing by county, §2-38-114.

Unclaimed estrays.

Payment to county, §2-38-121.

Cremation of dead animals.

Fowl, §§2-40-401 to 2-40-406.

General provisions, §§2-40-301 to 2-40-303.

Damages.

Running at large.

Liability for damage to crops, §2-38-301.

Dead animals.

Carcass data service, §2-33-203.

Fees, §2-33-203.

Cremation.

Fowl, §§2-40-401 to 2-40-406.

General provisions, §§2-40-301 to 2-40-303.

LIVESTOCK —Cont'd**Definitions.**

Brands and marks, §2-34-201.

Diagnostic testing.

Fees, §2-33-111.

Rules and regulations.

Authority of livestock and poultry commission, §2-33-111.

Diseases.

Owners of diseased animal.

Duties, §2-40-104.

Quarantine.

Cattle, §§2-40-1001 to 2-40-1006.

Domestic fish farming, §§2-5-101 to 2-5-103.**Drovers.**

Brands and marks.

Certificate of clerk, §2-34-303.

Duty to mark or brand stock driven through state, §2-34-302.

Recording, §2-34-303.

Other stock prevented from following droves, §2-34-304.

Violation, §2-34-304.

Violation.

Penalty, §2-34-301.

Writ of detention, §2-34-304.

Equine monitoring through identification chips, §2-32-301.**Estrays.**

Death or escape.

Liability, §2-38-119.

Feral hogs, §2-38-504.

Sale, disposal or killing before expiration of redemption period, §2-38-118.

Penalty, §2-38-118.

Unclaimed estrays.

Taker-up to make payment to county, §2-38-121.

Evidence.

Brands and marks.

State brand book.

Prima facie evidence of ownership, §2-34-211.

Executions.

Running at large.

Delinquency in payment by taker-up, §2-38-121.

Feeding and care of livestock.

Commercial feeds, §§2-37-101 to 2-37-114.

Feeder pig and feeder calf grading program.

Established, §2-33-204.

Fees, §2-40-1201.

Diagnostic testing, §2-33-111.

Disposition of funds, §2-40-1201.

LIVESTOCK —Cont'd**Fees —Cont'd**

Rabies.

Pseudorabies control and eradication program.

Levy of fees to fund, §2-40-1201.

Fences.

General provisions, §§2-39-101 to 2-39-111.

Fish farming.

Domestic fish farming, §§2-5-101 to 2-5-103.

Forfeitures.

Running at large.

Forfeiture to taker-up, §2-38-120.

Funds.

Brand registry fund.

Created, §2-34-213.

Federal Arkansas livestock and poultry fund.

Creation, §2-33-114.

Transfer of funds from livestock and poultry equine infectious anemia control fund, §2-33-116.

Livestock marketing fund, §2-33-206.

Livestock spraying program fund, §2-33-208.

Interstate commerce.

Violation of regulations.

Misdemeanors, §2-33-110.

Judgments.

Running at large.

Costs, §2-38-122.

Delinquency in payment by taker-up, §2-38-121.

Killing livestock.

Feral hogs, §2-38-502.

Hogs and goats running at large.

Sufficiency of notice to owner, §2-38-303.

Stallions or jacks running at large.

Notice, §2-38-203.

Liens.

Running at large.

Lien for crop injuries, §2-38-301.

Livestock shows, §§2-36-101 to 2-36-306.**Marketing.**

Cooperation with federal and state agencies, §2-33-205.

Rules and regulations.

Promulgation by commission, §2-33-202.

Marketing division.

Established, §2-33-201.

Responsibilities, §2-33-201.

LIVESTOCK —Cont'd**Minors.**

Brands and marks.

Minors owning cattle separate from guardian, §2-34-103.

Newspapers.

Running at large.

Publication in addition to posting, §2-38-112.

Notary public.

Transfer record.

Persons taking acknowledgment.

Fees, §2-35-208.

Notice.

Running at large.

Delinquency in payment by taker-up, §2-38-121.

Estray not to be used until notice given, §2-38-104.

Impoundment of animals running at large, §2-38-405.

Notice to justice when no claimant, §2-38-106.

Owner failing to take up animal after notice.

Penalty, §2-38-302.

Posting notice description, §2-38-106.

Service of notice by sheriff, §2-38-121.

Stallions and jacks.

Right to kill, §2-38-203.

Sufficiency of notice to owner, §2-38-303.

Oaths.

Running at large.

Oath of taker-up, §2-38-107.

Penalties.

Cumulative to penalties of initiated act, §2-38-302.

Drovers.

Violations, §2-34-301.

Estrays.

Selling or disposing, §2-38-118.

Running at large.

Failure to advertise, §2-38-111.

Owners.

Failure to take up animal after notice, §2-38-302.

Penalties cumulative to penalties of initiated act, §2-38-302.

Selling or disposing of estray, §2-38-118.

Transfer records.

Violations of act, §2-35-203.

Perjury.

Transfer records.

Applicability, §2-35-207.

LIVESTOCK —Cont'd**Pleadings.**

Running at large.

Delinquency in payment by taker-up.

Formal pleadings not required for judgment and execution, §2-38-121.

Production contracts.

Definitions, requirements, disputes, arbitration, violations, relief, §2-32-201.

Publication.

Running at large.

Publication in addition to posting, §2-38-112.

Quarantine.

Cattle.

General provisions, §§2-40-1001 to 2-40-1006.

Records.

Stockyards, §2-35-211.

Transportation.

One county to another, §2-35-204.

Rules and regulations.

Brands and marks.

Director, §2-34-204.

Diagnostic testing.

Promulgation by livestock and poultry commission, §2-33-111.

Running at large.

Actions.

Refusal to deliver to owner.

Right of action, §2-38-116.

Advertisements.

Expenses.

Payment, §2-38-113.

Failure to advertise.

Penalty, §2-38-111.

Persons taking-up animals, §2-38-111.

Publication in addition to posting, §2-38-112.

Animals on range.

When taken, §2-38-102.

Bond of taker-up, §2-38-109.

Record, §2-38-110.

Castration.

Method, §2-38-202.

Certificate of clerk.

Record of marks and brands, §2-38-105.

Charges.

Claimant to pay, §2-38-106.

Compensation for keeping estrays, §2-38-117.

Compensation for taking-up, §2-38-104.

LIVESTOCK —Cont'd**Running at large —Cont'd**

Counties.

Impoundment.

Enclosure provided by county,
§2-38-403.

Payment to county for unclaimed
estrays, §2-38-121.

Stray-pens.

Providing by county, §2-38-114.

Crops.

Liability for damages, §2-38-301.

Lien for crop injury, §2-38-301.

Death or escape of estray.

Liability, §2-38-119.

Delinquency in payment by taker-up,
§2-38-121.

Delivery to owner on payment of cost.

Receipt to taker-up, §2-38-115.

Description of animal.

Posting notice, §2-38-106.

Duty of taker-up, §2-38-104.

Executions.

Delinquency in payment by
taker-up, §2-38-121.

Exhibition of animal in stray-pen,
§2-38-114.

Expenses.

Payment, §2-38-113.

Feral hogs, §2-38-504.

Forfeiture to taker-up, §2-38-120.

Impoundment.

Daily charges.

County entitled to, §2-38-408.

Enclosures.

Delivery, §2-38-404.

Providing by county, §2-38-403.

Newspapers.

Notice of impounding, §2-38-405.

Notice of impounding, §2-38-405.

Purpose of act, §2-38-401.

Reclaiming by owner, §2-38-406.

Sales.

Unclaimed animals, §2-38-407.

Sheriffs.

Delivery to enclosure, §2-38-404.

Duty to impound, §2-38-402.

Special funds, §2-38-408.

State police.

Delivery to enclosure, §2-38-404.

Duty to impound, §2-38-402.

Unclaimed animals.

Sale, §2-38-407.

Judgments.

Delinquency in payment by
taker-up.

Judgment against delinquent,
§2-38-121.

LIVESTOCK —Cont'd**Running at large —Cont'd**

Judgments —Cont'd

Delinquency in payment by taker-up
—Cont'd

Judgment for costs, §2-38-122.

Killing hogs and goats.

Sufficiency of notice to owner,
§2-38-303.

Mules.

Right to kill.

Notice, §2-38-203.

Taking up.

Right of person taking up,
§2-38-202.

Newspapers.

Publication in addition to posting,
§2-38-112.

No claimants.

Notice to justice when no claimants,
§2-38-106.

Notice.

Delinquency in payment by
taker-up, §2-38-121.

Estray not to be used until notice
given, §2-38-104.

Notice to justice when no claimant,
§2-38-106.

Owner failing to take up animal
after notice.

Penalty, §2-38-302.

Posting notice description,
§2-38-106.

Service by sheriff, §2-38-121.

Sufficiency of notice to owner,
§2-38-303.

Oath of taker-up, §2-38-107.

Order for delivery of animal,
§2-38-115.

Owners.

Delivery on payment of cost,
§2-38-115.

Failure to take up animal after
notice, §2-38-302.

Impoundment of animals running at
large.

Reclaiming by owner, §2-38-406.

Owner for delivery of animal,
§2-38-115.

Reclamation, §2-38-115.

Refusal to delivery.

Rights of owner, §2-38-116.

Penalties.

Cumulative to penalties of initiated
act, §2-38-302.

Failure to advertise, §2-38-111.

Owner failing to take-up animal
after notice, §2-38-302.

LIVESTOCK —Cont'd**Running at large —Cont'd**

Penalties —Cont'd

Selling or disposing of estray,
§2-38-118.

Pleadings.

Delinquency in payment by
taker-up.

Former pleadings not required for
judgment and execution,
§2-38-121.

Publication.

Appraisal published in addition to
posting, §2-38-112.

Purpose of act, §2-38-401.

Reclamation by owner, §2-38-115.

Records.

Marks and brands.

Certificate of clerk, §2-38-105.

Restrictions on place of taking up,
§2-38-103.

Right of person taking up horses,
mules or jacks, §2-38-202.

Right to take up animals running at
large, §2-38-101.

Sale, disposal or killing of estrays
before expiration of redemption
period, §2-38-118.

Stallions and jacks.

Right to kill.

Notice, §2-38-203.

Taking up.

Right of person taking up,
§2-38-202.

Stray-pen.

Counties to provide, §2-38-114.

Taker-up to exhibit animal,
§2-38-114.

Time for claiming animals, §2-38-109.

Unlawful when prohibited by initial
act, §2-38-301.

Sales.

Bill of sale.

Required, §2-35-212.

Impoundment of animals running at
large.

Sale of unclaimed animals,
§2-38-407.

Sheriffs.

Brands and marks.

State brand book.

Distribution to sheriffs, §2-34-210.

Running at large.

Impoundment of animals running at
large.

Delivery to enclosure, §2-38-404.

Notice of delinquency in payment.

Service by sheriff, §2-38-121.

LIVESTOCK —Cont'd**Shows, §§2-36-101 to 2-36-306.****Slaughter.**

Sales for slaughter.

Bill of sale required, §2-35-212.

Spraying.

Income from spraying program,
§2-33-208.

Rules and regulations.

Livestock and poultry commission,
§2-33-207.

State police.

Running at large.

Impoundment of animals running at
large.

Delivery to enclosure, §2-38-404.

Stockyards.

Records.

Required, §2-35-211.

Transfer record.

Receiving livestock without transfer
record, §2-35-209.

Tick control, §§2-40-901 to 2-40-906.**Transportation.**

Exemptions from provisions,
§2-35-202.

One county to another.

Exemptions, §2-35-202.

Records.

Required, §2-35-204.

Transfer record.

Animals named in act include those
dead or alive, §2-35-201.

Carriers.

Receiving livestock without copy,
§2-35-209.

Contents, §2-35-204.

Copy filed with county clerk,
§2-35-208.

Filing with person taking
acknowledgment, §2-35-208.

Form, §2-35-205.

Inspection, §2-35-210.

One county to another, §2-35-204.

Perjury.

Law of perjury applicable,
§2-35-207.

Persons taking acknowledgment.

Fees, §2-35-208.

Receiving livestock without copy,
§2-35-209.

Stockyards.

Receiving livestock without copy,
§2-35-209.

Verification, §2-35-206.

Violations.

Penalty, §2-35-203.

LIVESTOCK —Cont'd**Writ.**

Drovers.

Writ of detention.

Form, §2-34-304.

LIVESTOCK AND POULTRY COMMISSION.**Actions.**

Cremation of dead animals.

Civil actions for violations of requirement, §2-40-303.

Anthrax spore vaccine.

Sale with advice and consent of state veterinarian, §2-40-108.

Appointment of members, §2-33-102.**Arrest.**

Livestock inspectors.

Powers to arrest, §2-33-108.

Bonds, surety.

Employees, §2-33-106.

Executive director, §2-33-104.

State veterinarian, §2-33-105.

Carcass data service.

Established, §2-33-203.

Fees for data information authorized, §2-33-203.

Funding, §2-33-206.

Compensation, §2-33-102.

Overtime compensation, §2-33-308.

Conflict of laws.

Disease or pest control and eradication.

Repeal of provisions in direct conflict, §2-40-201.

Created, §2-33-101.**Cremation of dead animals.****Actions.**

Civil actions for violations, §2-40-303.

Fowl.

Disposal of dead fowl generally, §§2-40-401 to 2-40-406.

Misdemeanors.

Violations of provisions, §2-40-301.

Penalties.

Violations of provisions, §2-40-301.

Requirement, §2-40-302.

Exceptions, §2-40-302.

Dairy committee, §2-33-401.**Dead livestock.**

Carcass data service, §2-33-203.

Cremation.**Fowl.**

Disposal of dead fowl generally, §§2-40-401 to 2-40-406.

General provisions, §§2-40-301 to 2-40-303.

LIVESTOCK AND POULTRY**COMMISSION —Cont'd****Dead livestock —Cont'd**

Disposal of large animal carcasses.

Complaints, §2-40-1305.

Definitions, §2-40-1301.

Method, §2-40-1302.

Provision violations.

Penalties, §2-40-1303.

Regulations, §2-40-1304.

Fowl.

Disposal, §§2-40-401 to 2-40-406.

Deposits.

Fees, revenues, fines and penalties, §2-33-113.

Destruction of diseased poultry flocks, §2-40-109.**Diseases.**

Anthrax spore vaccine.

Use.

Advice and consent of commission, §2-40-108.

Blood test training program, §2-40-205.

Conflict of laws.

Repeal of provisions in direct conflict, §2-40-201.

Destruction of diseased poultry flocks, §2-40-109.

Examinations.

Contaminated animals, §2-40-106.

Expenses of enforcement of act, §2-40-107.

Federal inspectors.

Enforcement of rules, §2-40-103.

Hog cholera.

Reports to commission, §2-40-704.

Investigation of report, §2-40-705.

Rules and regulations, §2-40-703.

Inquiries into outbreaks of disease, §2-40-103.

Inspections.

Right of entry for purpose of inspection, §2-40-106.

Inspectors and agents.

Appointment, §2-40-105.

Interference with employees.

Penalty for interference, §2-40-101.

Livestock markets.

Blood test training program, §2-40-205.

Powers of commission, §2-40-202.

Subpoena power, §2-40-203.

Testing and vaccination of livestock, §2-40-204.

Quarantine, §2-40-103.

Rules and regulations, §2-40-209.

Violations of provisions, §2-40-209.

LIVESTOCK AND POULTRY COMMISSION —Cont'd

Diseases —Cont'd

Reports.

Veterinary inspectors, §2-40-106.

Rules and regulations, §§2-40-103,
2-40-202.

Subpoenas.

Power of commission, §2-40-203.

Supervision of livestock sanitation,
§2-40-102.

Supplemental nature of provisions,
§2-40-201.

Vaccinations.

Anthrax spore vaccine.

Use.

Advice and consent of
commission, §2-40-108.

Fees.

Funding of brucellosis program,
§2-40-206.

On-the-farm calthood vaccination.

Costs, §2-40-207.

Powers as to testing and vaccination
of livestock, §2-40-204.

Veterinary inspectors.

Reports to owner, §2-40-106.

Employees.

Bonds, surety, §2-33-106.

Compensation.

Overtime compensation, §2-33-308.

Equine monitoring through identification chips, §2-32-301.

Established, §2-33-101.

Executive director, §2-33-104.

Appointment, §2-33-104.

Bond, surety, §2-33-104.

Duties, §2-33-104.

Powers, §2-33-104.

Expenses, §2-33-102.

Feeder pig and feeder calf grading program.

Established, §2-33-204.

Fees, §2-33-204.

Failure to pay, §2-33-204.

Funding, §2-33-206.

Fees, §§2-33-113, 2-33-115.

Carcass data information, §2-33-203.

Deposit of funds received, §2-33-206.

Diagnostic testing.

Disposition of fees, §2-33-111.

Fee structure, §2-33-111.

Feeder pig and feeder calf grading
program, §2-33-204.

Failure to pay, §2-33-204.

Fowl.

Disposal of dead fowl.

Carcasses.

Cremation, §§2-40-403, 2-40-404.

LIVESTOCK AND POULTRY COMMISSION —Cont'd

Fowl —Cont'd

Disposal of dead fowl —Cont'd

Carcasses —Cont'd

Defined, §2-40-401.

Definitions, §2-40-401.

Environmental quality.

Jurisdiction of Arkansas

department unimpaired,
§2-40-406.

Methods, §§2-40-403, 2-40-404.

Misdemeanors, §2-40-402.

Procedure, §2-40-404.

Required, §2-40-403.

Rules and regulations, §2-40-405.

Specifications, §2-40-404.

Violations of provisions, §2-40-402.

Funds.

Livestock marketing fund, §2-33-206.

Hog cholera.

Reports to commission, §2-40-704.

Investigation of report, §2-40-705.

Rules and regulations, §2-40-703.

Inspections.

Livestock markets.

Generally, §2-40-208.

Inspectors and agents.

Appointments, §2-40-105.

Interstate commerce.

Cooperation with federal and state
agencies, §2-33-305.

Movement of livestock or poultry in
violation of regulations.

Misdemeanor, §2-33-110.

Investigations.

Hog cholera.

Investigation of report, §2-40-705.

Livestock inspectors.

Arrest powers, §2-33-108.

Livestock marketing.

Cooperation with federal and state
agencies, §2-33-205.

Livestock marketing division.

Established, §2-33-201.

Responsibilities, §2-33-201.

Rules and regulations.

Promulgation by commission,
§2-33-202.

Livestock markets.

Blood test training program,
§2-40-205.

Closing for noncompliance with
standards, §2-40-208.

Diseases.

Blood test training program,
§2-40-205.

LIVESTOCK AND POULTRY COMMISSION —Cont'd

Livestock markets —Cont'd

Inspections.

Generally, §2-40-208.

Standards.

Noncompliance, §2-40-208.

Promulgation, §2-40-208.

Livestock shows.

Rules for grading fairs.

Formulation by commission,
§2-36-101.

Meetings.

Quorum, §2-33-103.

Rules of business, §2-33-103.

Members, §2-33-102.

Mileage allowance, §2-33-102.

Oaths, §2-33-102.

Officers, §2-33-103.

Orders, §2-33-109.

Penalties.

Cremation of dead animals.

Violations of provisions, §2-40-301.

Diseases.

Interference with employees,
§2-40-101.

Distribution of fines and penalties,
§2-33-113.

Powers and duties of commission.

Additional powers, §2-33-107.

Quarantine.

Rules and regulations, §2-40-209.

Establishment, §2-40-103.

Quorum, §2-33-103.

Rabies.

Declaration of rabies infested area,
§2-40-1101.

Representation of congressional districts, §2-33-102.

Rules and regulations, §2-33-109.

Diagnostic testing.

Authority of commission to
promulgate, §2-33-111.

Disease or pest control and
eradication, §2-40-202.

Disposal of dead fowl, §2-40-405.

Disposal of large animal carcasses.

Method, §2-40-1302.

Promulgation, §2-40-1304.

Fees, promulgation, §2-33-115.

Hog cholera, §2-40-703.

Livestock marketing, §2-33-202.

Quarantine, §2-40-209.

Spraying of livestock, §2-33-207.

Tick control program, §2-40-903.

Rules of business, §2-33-103.

Small animal diagnostic testing.

Fees, §2-33-112.

LIVESTOCK AND POULTRY COMMISSION —Cont'd

Small animal diagnostic testing —Cont'd

Rules and regulations, §§2-33-111,
2-33-112.

Spraying of livestock, §2-33-207.

Income from spraying program,
§2-33-208.

Rules and regulations, §2-33-207.

State departments and agencies.

Cooperation with state agencies,
§2-33-305.

Livestock marketing.

Cooperation with state agencies,
§2-33-205.

State veterinarian.

Anthrax spore vaccine.

Sale with advice and consent of
state veterinarian, §2-40-108.

Appointment, §2-33-105.

Bond, surety, §2-33-105.

Duties, §2-33-105.

Powers, §2-33-105.

Qualifications, §2-33-105.

Subpoenas.

Disease or pest control and
eradication.

Power of subpoena, §2-40-203.

Supervising sanitation of livestock, §2-40-102.

Terms of office, §2-33-102.

Tick control, §§2-40-901 to 2-40-906.

United States.

Cooperation with federal agencies,
§2-33-305.

Livestock marketing.

Cooperation with federal agencies,
§2-33-205.

Vacancies, §2-33-102.

Veterinary inspectors.

Reports.

Furnishing owner with report,
§2-40-106.

LIVESTOCK SHOWS.

Accounts and accounting.

Reports.

Accounting reports by recipients of
funds, §2-36-211.

Appropriations.

Construction and operation, §2-36-206.

Arkansas-Oklahoma district fair, §2-36-307.

Audits.

Associations, §2-36-210.

Boards and commissions.

Northeast Arkansas district fair
advisory board, §2-36-302.

LIVESTOCK SHOWS —Cont'd**Bonds, surety.**

Executive officer, §2-36-208.

Amount of bond, §2-36-209.

Counties.

Adjoining counties.

Joint fair and livestock shows,

§2-36-303.

Division of funds among counties and districts, §2-36-204.

Joint fair and livestock shows.

Allocation and use of funds,
§2-36-303.Allocation of premium funds,
§2-36-303.

Grading, §2-36-303.

Nonresident landowners.

Eligibility to participate in county show, §2-36-304.

Definitions.

Exhibitor, §2-36-102.

District junior livestock shows,

§2-36-305.

District livestock show.

Northwest Arkansas district fair and livestock show, §2-36-301.

Entry classifications.

Categories excluded, §2-36-101.

Determination by advisory committee,
§2-36-101.**Executive officers.**

Bonds, §2-36-208.

Amount, §2-36-209.

Exhibitor.

Defined, §2-36-102.

Funds.

Applications, §2-36-207.

Division among counties and districts,
§2-36-204.**Grading fairs.**

Formulation of rules by livestock and poultry commission, §2-36-101.

Rules, §2-36-101.

Junior division.

Premium funds, §2-36-205.

Junior livestock shows, §2-36-305.**Livestock associations.**

Audits of expenditures, §2-36-210.

Nonresidents.

Eligibility to participate in county show, §2-36-304.

North Central Arkansas district fair and livestock show, §2-36-306.**Northeast Arkansas district fair advisory board.**

Chairman, §2-36-302.

Creation, §2-36-302.

Duties, §2-36-302.

LIVESTOCK SHOWS —Cont'd**Northeast Arkansas district fair advisory board —Cont'd**

Members, §2-36-302.

Reapportionment after census,
§2-36-302.

Quorum, §2-36-302.

Reapportionment of membership after census, §2-36-302.

Terms, §2-36-302.

Vacancies, §2-36-302.

Northwest Arkansas district fair and livestock show.

Counties in district, §2-36-301.

Established, §2-36-301.

Privileges and status, §2-36-301.

Premium funds.Accounting reports by recipients,
§2-36-211.Administration of provisions,
§2-36-201.

Amount, §2-36-209.

Disbursement and expenditure.

Generally, §2-36-202.

Generally, §2-36-202.

Joint fair and livestock shows.

Allocation of premium funds,
§2-36-303.

Junior division, §2-36-205.

Livestock and poultry commission.

Administration of provisions,
§2-36-201.

Reports.

Accounting reports by recipients,
§2-36-211.

State fair.

Use by state fair and livestock association, §2-36-203.

Use.

Restrictions on use, §2-36-205.

Reports.

Accounting reports by recipients of funds, §2-36-211.

Sales.

Immoral, lewd, etc., items, §2-36-103.

State fair.

Premium funds, §2-36-203.

LOANS.**Agriculture.**

Foreign investors.

Right to loan to Arkansas farmers,
§2-3-104.**Boll weevil suppression and eradication.**Cotton growers' organizations,
§2-16-612.

M**MAIL.****Alcoholic beverages.**

Director of alcoholic beverage control division.

Order suspending, revoking or refusing license sent by registered mail, §3-2-212.

Certified mail.

Registered mail.

Use of certified mail in place of registered mail, §1-2-122.

Return receipt as evidence, §1-2-122.

Evidence.

Certified mail.

Return receipt as evidence, §1-2-122.

Registered mail.

Certified mail.

Use of certified mail in place of registered mail, §1-2-122.

MALT BEVERAGES.

Native breweries, §§3-5-1401 to 3-5-1414.

MAMMAL OF STATE, §1-4-122.

MANDAMUS.**Alcoholic beverages.**

Local option elections.

Initiated act proceedings.

County officials, §3-8-207.

MANURE.**Natural organic fertilizers,**

§§2-19-501 to 2-19-503.

MARKETING.

Catfish promotion board, §§2-9-101 to 2-9-112.

MARKETING ASSOCIATIONS.**Agricultural cooperative**

associations, §§2-2-101 to 2-2-313.

Cooperative marketing associations, §§2-2-401 to 2-2-430.

MARL.**Agricultural liming materials,**

§§2-19-301 to 2-19-308.

MARTIN LUTHER KING, JR.'S BIRTHDAY.

Official holiday, §1-5-101.

MEAT AND MEAT PRODUCTS.**Hogs.**

Feral hogs.

Livestock health requirements, §2-38-503.

MEDIATION.

Farm mediation, §§2-7-101 to 2-7-310.

MEDICINE.**Alcoholic beverages.**

Medicinal preparations exempted from act, §3-1-103.

MEMORIAL DAY.

Official holiday, §1-5-101.

MILITARY AFFAIRS.**Alcoholic beverages.**

Post-exchange package permits, §§3-4-701 to 3-4-706.

Sales to military.

Taxation.

Payment by wholesalers and importers.

Rules and regulations, §3-7-307.

MILK AND MILK PRODUCTS.

Milk stabilization board, §§2-10-101 to 2-10-104.

Creation, §2-10-103.

Findings and purposes, §2-10-102.

Members, §2-10-103.

Powers and duties, §2-10-104.

Title of provisions, §2-10-101.

Stabilization board, §§2-10-101 to 2-10-104.

MINES AND MINERALS.**Agriculture.**

Foreign investment.

Exception for land used for mineral leases, §2-3-110.

Leases.

Agricultural foreign investment.

Exception for land used for mineral leases, §2-3-110.

MINORITIES.

Definition of minorities in Arkansas, §§1-2-501 to 1-2-504.

MINORITIES IN ARKANSAS ACT,

§§1-2-501 to 1-2-504.

MINORS.**Alcoholic beverages.**

Beer and light wine, §3-5-221.

Licensing of retailers, §3-5-307.

On-premises consumption, §3-9-236.

Prohibited acts and practices.

Handling of alcoholic beverages by minors not allowed, §3-3-204.

Penalties for violation, §3-3-204.

Knowingly furnishing to minor, §3-3-202.

Posting of warning notices, §3-3-202.

Sales, §3-3-202.

Unknowingly furnishing to minor, §3-3-201.

MINORS —Cont'd**Alcoholic beverages —Cont'd**

Purchase or possession by minor unlawful, §3-3-203.

Responsible permittee programs.
Legislative intent and purpose, §3-4-801.

Cattle.

Brands and marks.
Minors owning cattle separate from father or guardian, §2-34-103.

Hogs.

Brands of minors owning hogs separate from father or guardian, §2-34-103.

Livestock.

Brands and marks.
Minors owning cattle separate from father or guardian, §2-34-103.

MISREPRESENTATION.**Agriculture.**

Grading of products and containers.
Misrepresentation as to grade or classification, §2-20-116.
Labeling of fruits and vegetables for interstate shipment, §2-20-308.

MOCKINGBIRD.

State bird, §1-4-118.

MONOPOLIES AND RESTRAINT OF TRADE.**Agricultural cooperative associations.**

Associations and contracts not in restraint of trade, §2-2-122.

Cooperative marketing associations.

Associations and contracts not in restraint of trade, §2-2-426.

Price fixing.

Cooperative marketing associations, §2-2-426.

MOONSHINING.**Alcoholic beverages.**

Illicit manufacture and equipment, §§3-3-401 to 3-3-405.

MORTGAGES AND DEEDS OF TRUST.**Agricultural cooperative associations.**

Merger or consolidation.
Mortgage and sale of assets, §2-2-310.

MOTOR CARRIERS.**Cattle.**

Transfer record.
Receiving without copy, §2-35-209.

MOTOR CARRIERS —Cont'd**Goats.**

Transfer records, §2-35-209.

Livestock.

Transfer record, §2-35-209.

MOTOR VEHICLES.**Fences.**

Escaped livestock where damaged by motor vehicle.
Owner's liability, §2-39-109.

MULES.**Estrays.**

Compensation for keeping, §2-38-117.

Running at large.

Right of person taking up, §2-38-202.

MUNICIPAL CORPORATIONS.**Alcoholic beverages.****Beer.**

Permits generally, §3-5-211.

Retailers.

Permits, §3-5-212.

Regulation, §3-5-213.

Retail sale of beer regulated by cities and towns, §3-5-213.

Licenses, §3-4-202.

On-premises consumption.

Supplemental tax or fee levied by city, incorporated town or county, §3-9-214.

Permits.

Beer and light wine.

Required for sale, distribution and manufacture, §3-5-211.

Retailers' permits, §3-5-212.

Police power of local governments.

On-premises consumption of alcohol.

Rules and regulations, §3-9-205.

Rules and regulations.

Retailers of beer and light wine, §3-5-213.

Taxation, §3-4-202.

Wine.

Light wine.

Permits generally, §3-5-211.

Retailers.

Permits, §3-5-212.

Regulation, §3-5-213.

Annexation.**Alcoholic beverages.**

Annexation of dry township into wet city or town.

Local option election, §§3-8-501, 3-8-502.

Local option election.

Annexation of dry township into wet city or town, §§3-8-501, 3-8-502.

MUNICIPAL CORPORATIONS

—Cont'd

Licenses.

Alcoholic beverages, §3-4-202.

Taxation.

Alcoholic beverages, §3-4-202.

MUSIC.**State musical instrument**, §1-4-113.**N****NAMES.****Soil amendment.**

Definition of "name," §2-19-402.

State of Arkansas.

Nickname, §1-4-106.

Pronunciation of state name, §1-4-105.

NATIONAL GARDEN WEEK.**Designation**, §1-5-110.**NATIVE AMERICAN HERITAGE****WEEK**, §1-5-113.**NATIVE AMERICANS.****Definition of minorities in Arkansas**,

§§1-2-501 to 1-2-504.

Holidays.

Native American heritage week,

§1-5-113.

NATIVE BRANDY LAW.**Alcoholic beverages.**

Brandy.

General provisions, §§3-6-101 to

3-6-106.

NATIVE BREWERIES, §§3-5-1401 to

3-5-1414.

Charitable organizations, providing**beverages for**, §3-5-1405.**Conflict of laws**, §3-5-1404.**Definitions**, §3-5-1403.**Dry areas.**

Licenses prohibited in, §3-5-1412.

Educational or promotional tasting**events**, §3-5-1409.**Fees generally**, §3-5-1408.**Legislative findings**, §3-5-1402.**Licenses**, §3-5-1405.

Additional licenses, §3-5-1406.

Application, §3-5-1410.

Dry areas, §3-5-1412.

Unlicensed operation, §3-5-1411.

Purpose of provisions, §3-5-1402.**Retailers' license fee**, §3-5-1406.**Rules promulgation**, §3-5-1413.**Sale for on-premises or off-premises****consumption**, §3-5-1405.**Shipping in or out of state**, §3-5-1407.**NATIVE BREWERIES** —Cont'd**Supplemental nature of provisions**,

§3-5-1414.

Tasting events, §3-5-1409.**Taxes**, §3-5-1408.**Title of act**, §3-5-1401.**Transportation of beverages**,

§3-5-1407.

Unlicensed operation, §3-5-1411.**Wholesalers' license fee**, §3-5-1406.**NATURAL ORGANIC FERTILIZERS**,

§§2-19-501 to 2-19-503.

NEWSPAPERS.**Grain.**

Public grain warehouses.

Receiver for grains stored in public
warehouse.

Publication of appointment,

§2-17-406.

Improvement districts.Commissioners of special improvement
districts.

Annual reports to be published,

§1-3-105.

Laws, reports and similar matters.

Cost of publication.

Printing of publication cost,

§1-3-109.

Penalties for noncompliance,

§1-3-109.

Eligibility of newspapers to publish,

§1-3-106.

General provisions, §§1-3-101 to

1-3-109.

Penalty for failure to comply, §1-3-101.

Printing of publication cost,

§1-3-109.

Publication in more than one

newspaper, §1-3-108.

Legal notices and advertisements.

Costs of publication.

Printing publication cost, §1-3-109.

Livestock.

Running at large.

Publication in addition to posting,

§2-38-112.

Public service commission.

Orders to be published, §1-3-103.

NEW YEAR'S DAY.**Official holiday**, §1-5-101.**NICKNAME OF STATE**, §1-4-106.**NONRESIDENTS.****Alcoholic beverages.**

Nonresident beer sellers, §§3-5-1301 to

3-5-1310.

NONRESIDENTS —Cont'd**Bees and honey.**

Registration, §2-22-110.

Livestock shows.

Eligibility to participate in county show, §2-36-304.

Poultry.

Commercial poultry buyers.

Bonds required, §2-35-213.

Purchase without bond, §2-35-213.

NORTH CENTRAL ARKANSAS**DISTRICT FAIR AND**

LIVESTOCK SHOW, §2-36-306.

NORTHWEST PURPLE MARTIN**CAPITAL.**

Designations, §1-4-121.

NOTARIES PUBLIC.**Livestock.**

Transfer record.

Persons taking acknowledgment.

Fees, §2-35-208.

NOTICE.**Agriculture.**

Grading of products and containers.

Standards and classifications.

Notice of adoption or modifications, §2-20-105.

Alcoholic beverages.**Beer.**

Distribution areas for beer, §3-5-103.

Retailers.

Licenses.

Applications, §3-5-304.

Local option elections.

1935 act proceedings, §3-8-304.

Permits.

Applications.

Requirements as to notice, §3-4-210.

Revocation of permit, §3-4-303.

Wholesale dealers and distributors.

Request to change wholesalers.

Hearing notice, §§3-2-405, 3-2-406.

Bees and honey.

Transporting of bees.

Plant board to be notified, §2-22-111.

Boll weevil suppression eradication.

Eradication zones.

Noncommercial cotton prohibition and requirement of commercial cotton grower participation, §2-16-610.

Brucellosis.

Eradication of herds identified with brucellosis, §2-40-210.

Commercial feeds.

Inspections, §2-37-111.

NOTICE —Cont'd**Cooperative marketing associations.**

Regular and special meetings, §2-2-413.

Goats.

Running at large.

Sufficiency of notice to owner, §2-38-303.

Grain.

Public grain warehouses.

Receiver for grain stored in public warehouses.

Notice of hearing on petition filed by commissioner, §2-17-404.

Notice to holders of warehouse receipts or unpriced scale tickets, §2-17-405.

Hogs.

Running at large.

Sufficiency of notice to owner, §2-38-303.

Livestock.

Running at large.

Delinquency in payment by taker-up, §2-38-121.

Estray not to be used until notice given, §2-38-104.

Impoundment of animals running at large, §2-38-405.

Notice to justice when no claimant, §2-38-106.

Owner failing to take up animal after notice.

Penalty, §2-38-302.

Posting notice description, §2-38-106.

Service of notice by sheriff, §2-38-121.

Stallions and jacks.

Right to kill, §2-38-203.

Sufficiency of notice to owner, §2-38-303.

Native breweries.

Educational or promotional tasting events, §3-5-1409.

Pest control.

Pests within state.

Board to give notice, §2-16-212.

Written notice to owner, §2-16-211.

Rice certification act.

Violations, §2-15-206.

Seeds.

Arbitration of defective seed claims.

Acceptance or rejection of arbitration committee's recommendation, §2-23-110.

NOTICE —Cont'd**Seeds —Cont'd**

Arbitration of defective seed claims
—Cont'd

Notice of mandatory arbitration.

Prerequisite to legal action,
§2-23-102.

Form, §2-23-102.

NUISANCES.**Actions.**

Agricultural facilities.

Actions for injuries or damages not
affected, §2-4-106.

Agricultural operations.

Actions for injuries or damages not
affected, §2-4-106.

Applicability of provisions to contracts,
§2-4-103.

Declaration of policy, §2-4-101.

Definitions, §2-4-102.

Employment of practices commonly or
reasonably associated with
production, §2-4-107.

Establishment prior to commencement
of use of surrounding area,
§2-4-107.

Expert fees, court costs, attorney's
fees.

Awarding to prevailing party,
§2-4-107.

Facilities or appurtenances not to
become nuisance, §2-4-107.

Legislative determinations, §2-4-101.

Liberal construction of chapter,
§2-4-108.

Present or future nuisance ordinances
void, §2-4-105.

Boll weevil suppression and eradication.

General provisions, §§2-16-601 to
2-16-617.

Johnson grass.

Declared public nuisance, §2-16-508.

Injunctions, §2-16-508.

NURSERIES.**Appeals.**

Licenses.

Denial, §2-21-110.

Invalidation, §2-21-111.

Fraud.

Nursery fraud act.

Agents.

Defined, §2-21-102.

Certificates of authority.

Fee, §2-21-112.

Citation of act.

Short title, §2-21-101.

NURSERIES —Cont'd**Fraud —Cont'd**

Nursery fraud act —Cont'd

Dealers.

Defined, §2-21-102.

Definitions, §2-21-102.

Deposits.

Moneys collected, §2-21-113.

District attorneys.

Prosecutions under act, §2-21-105.

Fees.

Certificates of authority for giving
horticultural advice,
§2-21-112.

Deposit and use of money
collected, §2-21-113.

Licenses, §2-21-108.

Deposit and use of money
collected, §2-21-113.

General provisions, §§2-21-101 to
2-21-113.

Horticultural advice.

Certificates of authority for giving,
§2-21-112.

Rendering expert advice,
§2-21-112.

Misdemeanors.

Violations of provisions, §2-21-104.

Nursery.

Defined, §2-21-102.

Nurseryman.

Defined, §2-21-102.

Nursery stock.

Defined, §2-21-102.

Penalties.

Violations of provisions, §2-21-104.

Person.

Defined, §2-21-102.

Plant board.

Rules and regulations, §2-21-106.

Prohibited acts, §2-21-103.

Prosecutions under act, §2-21-105.

Rules and regulations, §2-21-106.

Title of act.

Short title, §2-21-101.

Violations of provisions.

Misdemeanors, §2-21-104.

Penalties, §2-21-104.

Prosecution, §2-21-105.

Unlawful acts, §2-21-103.

Licenses.

Appeals.

Denial of license, §2-21-110.

Invalidation of license, §2-21-111.

Contents, §2-21-107.

Denial, §2-21-110.

Expiration, §2-21-109.

NURSERIES —Cont'd**Licenses —Cont'd**

Fees, §2-21-108.

Deposit and use of money collected,
§2-21-113.

Invalidation, §2-21-111.

Issuance, §2-21-107.

Annual basis, §2-21-109.

Penalties.

Nursery fraud act.

Violations, §2-21-104.

Prosecuting attorneys.

Nursery fraud act.

Prosecutions under act, §2-21-105.

Rules and regulations.

Nursery fraud act.

Plant board, §2-21-106.

O**OATHS.****Alcoholic beverages.**

Beer.

Permits.

Applicant, §3-5-214.

Board of alcoholic beverage control.

Conducting or hearing appeals,
§3-2-215.

Personnel, §3-2-207.

Division of alcoholic beverage control.

Personnel, §3-2-207.

Enforcement division of alcoholic
beverage control.

Personnel, §3-2-207.

Wine.

Light wine.

Permits.

Applicant, §3-5-214.

Livestock.

Running at large.

Oath of taker-up, §2-38-107.

Livestock and poultry commission,

§2-33-102.

OBSCENITY.**Alcoholic beverages.**

Beer retailers.

Nudity on premises.

Prohibited, §3-5-222.

Light wine retailers.

Nudity on premises.

Prohibited, §3-5-222.

Nudity on premises.

Penalty, §§3-5-222, 3-9-101.

Prohibited, §§3-5-222, 3-9-101.

Regulations, §§3-5-222, 3-9-101.

ORCHARDS.**Claims.**Presentation of claims to county court
for destroyed trees, §2-16-101.**State board on orchard inspection.**Compensation for trees destroyed by
board, §2-16-101.**ORDERS.****Grain.**Receivers for grain stored in public
warehouses.Issuance of temporary orders by
court, §2-17-402.**Livestock and poultry commission,**
§2-33-109.**Pesticides.**

Plant board.

Stop-sale, use, or removal orders,
§§2-16-413, 2-16-414.**Soil amendment.**Stop-sale, use or removal orders,
§2-19-412.**ORDINANCES.****Agricultural operations.**Present or future nuisance ordinance
void, §2-4-105.**Alcoholic beverages.**

Retail establishments.

Local closing hours, §3-4-407.

Nuisances.

Agricultural operations.

Present or future nuisance
ordinances void, §2-4-105.**ORGANIC FERTILIZERS.****Natural organic fertilizers,**

§§2-19-501 to 2-19-503.

ORNAMENTAL FISH.**Commercial bait and ornamental
fish act, §§2-5-201 to 2-5-208.****P****PACIFIC ISLANDERS.****Definition of minorities in Arkansas,**

§§1-2-501 to 1-2-504.

PARI-MUTUEL WAGERING.**Alcoholic beverages.**

Mixed drink permit, §3-9-238.

PARTIES.**Grain.**Receiver for grain stored in public
warehouses.Holders of warehouse receipts or
unpriced scale tickets not
parties, §2-17-405.

PARTIES —Cont'd**Grain —Cont'd**

- Receiver for grain stored in public warehouses —Cont'd
- Surety joined as party defendant, §2-17-409.

PARTNERSHIPS.**Alcoholic beverages.**

- Permits.
- Proceedings on dissolution of permittee firms, §3-4-103.

PATRIOTS' DAY.

- Commemoration on proclamation, §1-5-106.

PEACHES.**Labeling of fruits and vegetables for interstate shipment.**

- Products to which act applies, §2-20-303.

PEAR TREES.**Compensation for destroyed trees, §2-16-101.**

- Presentation of claims to county court, §2-16-101.

PERJURY.**Cattle.**

- Transfer records.
- Law of perjury applicable, §2-35-207.

Goats.

- Transfer records, §2-35-207.

Hogs.

- Transfer records, §2-35-207.

Horses.

- Transfer records, §2-35-207.

Livestock.

- Transfer records.
- Applicability, §2-35-207.

Sheep.

- Transfer records, §2-35-207.

PEST CONTROL.**Agents.**

- Act of employee or agent deemed act of principal, §2-16-204.

Boll weevil suppression and eradication, §§2-16-601 to 2-16-617.**Conflicts with federal law, §2-16-205.****Employees.**

- Act of employee or agent deemed act of principal, §2-16-204.

Eradication of pests.

- Notice to owner, §2-16-211.

Inspections.

- Fees, §2-16-209.

PEST CONTROL —Cont'd**Inspections —Cont'd**

- Sale, shipment or disposal of plants or products.
- Certificate of inspection required, §2-16-210.

Liens.

- Failure to comply with notice, §2-16-211.
- Notice.
- Failure to comply with notice, §2-16-211.

Notice.

- Pests within state.
- Board to give notice, §2-16-212.
- Written notice to owner, §2-16-211.

Receivers.

- Prohibited plants or products.
- Duties of receivers, §2-16-213.

Searches and seizures.

- Insect pests, weeds or prohibited plants, §2-16-209.

Transportation of insect pests into state, §2-16-209.**PESTICIDES.****Active ingredient.**

- Defined, §2-16-403.
- Formulas.
- Submission to plant board, §2-16-407.

Adulteration.

- Defined, §2-16-403.
- Unlawful acts, §2-16-411.

Animals.

- Defined, §2-16-403.

Appeals.

- Decisions of plant board, §2-16-408.

Beneficial insects.

- Defined, §2-16-403.

Condemnation, §2-16-414.**Control act.**

- Administration, §2-16-405.
- Citation of act, §2-16-401.
- Declaration of purpose, §2-16-402.
- Definitions, §2-16-403.
- Legislative declarations, §2-16-402.
- Title of act, §2-16-401.

Cotton.

- Date of manufacture stamped on cotton insecticides, §2-16-102.

Definitions, §2-16-403.**Defoliants.**

- Defined, §2-16-403.

Desiccants.

- Defined, §2-16-403.

Devices.

- Defined, §2-16-403.

PESTICIDES —Cont'd**Distribute.**

Defined, §2-16-403.

Enforcement, §2-16-412.**Environment.**

Defined, §2-16-403.

EPA.

Defined, §2-16-403.

Experimental use permits, §2-16-409.**Fees.**

Registration, §2-16-407.

FIFRA.

Defined, §2-16-403.

Formulas.

Submission to plant board, §2-16-407.

Fungi.

Defined, §2-16-403.

Highly toxic pesticide.

Defined, §2-16-403.

Imminent hazard.

Defined, §2-16-403.

Determination by plant board,
§2-16-408.

Inert ingredients.

Defined, §2-16-403.

Formulas.

Submission to plant board,
§2-16-407.

Ingredient statement.

Defined, §2-16-403.

When pesticide deemed misbranded,
§2-16-410.

Insects.

Defined, §2-16-403.

Inspections.

Plant board, §2-16-406.

Right of entry of plant board,
§2-16-412.

Labels.

Defined, §2-16-403.

Misbranding.

When pesticide deemed misbranded,
§2-16-410.

Noncompliance.

Determination by plant board,
§2-16-408.

Misbranding.

Unlawful acts, §2-16-411.

When pesticide deemed misbranded,
§2-16-410.

Nematodes.

Defined, §2-16-403.

Orders.

Plant board.

Stop-sale, use or removal orders,
§§2-16-413, 2-16-414.

Permits.

Experimental use permits, §2-16-409.

PESTICIDES —Cont'd**Person.**

Defined, §2-16-403.

Pests.

Defined, §2-16-403.

Plant board.

Administration of control act,
§2-16-405.

Appeals, §2-16-408.

Authority generally, §2-16-406.

Cooperation with federal government
or agencies of state, §2-16-416.

Defined, §2-16-403.

Delegation of duties, §2-16-405.

Duties.

Delegation, §2-16-405.

Enforcement, §2-16-412.

Funds.

Disposition, §2-16-419.

Inspections.

Authority, §2-16-406.

Labels.

Determination of noncompliance,
§2-16-408.

Orders.

Stop-sale, use or removal orders.

Hearings, §2-16-414.

Issuance, §2-16-413.

Powers, §2-16-406.

Publication of information, §2-16-417.

Registration.

Exception from registration,
§2-16-407.

Refusal to register, §2-16-408.

Restricted use pesticides.

Adoption, §2-16-406.

Right of entry, §2-16-412.

Rules and regulations, §2-16-406.

Subpoenas.

Power to issue, §2-16-415.

Trade secrets.

Protection, §2-16-418.

Plant regulators.

Defined, §2-16-403.

Protect health and the environment.

Defined, §2-16-403.

Publications.

Plant board may publish information,
§2-16-417.

Registrant.

Defined, §2-16-403.

Registration.

Appeals, §2-16-408.

Cancellation or suspension, §2-16-408.

Definition of registrants, §2-16-403.

Refusal to register, §2-16-408.

Required, §2-16-407.

PESTICIDES —Cont'd**Registration —Cont'd**

Statement with plant board,
§2-16-407.

Unlawful acts, §2-16-411.

When not required, §2-16-407.

Restricted use pesticides.

Authority of plant board to adopt,
§2-16-406.

Defined, §2-16-403.

Spray adjuvants.

Defined, §2-16-403.

State restricted pesticides.

Defined, §2-16-403.

Stop sale orders, §2-16-413.**Storage and disposal.**

Manner, §2-16-411.

Subpoenas.

Power of plant board, §2-16-415.

Tests.

Full description of tests made and
results, §2-16-407.

Trade secrets.

Protection, §2-16-418.

United States.

Plant board may cooperate with
federal government, §2-16-416.

Unlawful acts, §2-16-411.**Unreasonable adverse effects on the environment.**

Defined, §2-16-403.

Violations, §2-16-411.

Violations of pesticide control act,
§2-16-404.

Weeds.

Defined, §2-16-403.

Wildlife.

Defined, §2-16-403.

PETITIONS.**Boll weevil suppression and eradication.**

Failure to pay assessments.

Destruction of cotton.

Cotton not destroyed deemed
public nuisance.

Petition to condemn and destroy
cotton, §2-16-617.

Brucellosis.

Modified certified brucellosis free
areas, §2-40-601.

Grain.

Receivers for grain stored in public
warehouses.

Appointment of commissioner as
receiver, §2-17-402.

PIGS.**Feeder pig and feeder calf grading program.**

Fees.

Failure to pay, §2-33-204.

Livestock and poultry commission.

Authority to establish program,
§2-33-204.

PLANT BOARD.**Boll weevil suppression and eradication.**

General provisions, §§2-16-601 to
2-16-617.

Commercial bait and ornamental fish act, §§2-5-201 to 2-5-208.**Rice certification act, §§2-15-201 to 2-15-208.****Seeds.**

Arbitration of defective seed claims.

General provisions, §§2-23-101 to
2-23-110.

Turf grass.

Certification by board, §2-16-109.

PLEADINGS.**Livestock.**

Running at large.

Delinquency in payment by taker
up.

Formal pleadings not required for
judgment and execution,
§2-38-121.

POET LAUREATE OF STATE.**Appointment, §1-4-114.****POTATOES.****Irish potatoes.**

Labeling of fruits and vegetables for
interstate shipment.

Products to which act applies,
§2-20-303.

POULTRY.**Bonds, surety.**

Nonresident commercial buyers,
§2-35-213.

Insuring payment of poultry
purchase, §2-35-213.

Purchase without bond, §2-35-213.

Commercial feeds, §§2-37-101 to 2-37-114.**Contracts.**

Production contracts.

Definitions, requirements, disputes,
arbitration, violations, relief,
§2-32-201.

Diagnostic testing.

Livestock and poultry commission.

Promulgation of rules and
regulations, §2-33-111.

POULTRY —Cont'd**Diseased poultry flocks.**

Destruction, §2-40-109.

Disposal of dead fowl, §§2-40-401 to 2-40-406.**Feed.**

Commercial feeds, §§2-37-101 to 2-37-114.

Fees.

Diagnostic testing, §2-33-111.

Livestock and poultry commission, §§2-33-101 to 2-33-401.**Nonresidents.**

Commercial poultry buyers.

Bonds required, §2-35-213.

Purchase without bond, §2-35-213.

Poultry and egg grading program.

Agreements with federal government, §2-33-306.

Costs.

Collection, §2-33-304.

Proration of costs among processors, §2-33-304.

Division of markets and grading.

Established, §2-33-301.

Responsibility, §2-33-301.

Employees.

Civil service system, §2-33-302.

Compensation.

Overtime compensation, §2-33-308.

Retirement, §2-33-302.

Established, §2-33-303.

Funds, §2-33-307.

Disposition of funds, §2-33-307.

Interstate movement.

Cooperation with federal and state agencies, §2-33-305.

Rules and regulations, §2-33-304.

United States department of agriculture.

Establishment of program in cooperation with, §2-33-303.

Production contracts.

Definitions, requirements, disputes, arbitration, violations, relief, §2-32-201.

Retirement.

Poultry and egg grading program.

Retirement provisions for employees, §2-33-302.

Rules and regulations.

Diagnostic testing.

Promulgation by commission, §2-33-111.

Poultry and egg grading, §2-33-304.

POW/MIA RECOGNITION DAY,

§1-5-112.

PREEMPTION.**Fertilizers, preemption of local laws,** §2-19-212.**PRISONERS OF WAR****REMEMBRANCE DAY,** §1-5-109.**POW/MIA recognition day,** §1-5-112.**PRISON TERMS.****Agricultural cooperative associations,** §2-2-202.**Alcoholic beverages.**

Hard labor, §3-3-102.

Permits.

Issuance, §3-4-204.

Plant disease and pest control.

Prosecution, §2-16-304.

PRIVATE CLUBS.**Alcoholic beverages.**

General provisions, §§3-9-221 to 3-9-229.

PRIVILEGE TAXES.**Beer and light wine,** §§3-5-205, 3-5-208.**PROHIBITION.****Alcoholic beverages.**

Prohibited acts and practices.

Dry territories, §§3-3-301 to 3-3-315.

PROMISSORY NOTES.**Cooperative marketing associations.**

Acceptance of notes of members, §2-2-417.

PROPERTY.**Agricultural cooperative associations.**

Powers as to property, §2-2-106.

Cooperative marketing associations.

Powers as to property, §2-2-406.

PROSECUTING ATTORNEYS.**Alcoholic beverages.**

Enforcement of liquor laws.

Special prosecutor, §3-2-301.

Nurseries.

Nursery fraud act.

Prosecutions under act, §2-21-105.

PUBLICATION.**Boll weevil suppression eradication.**

Eradication zones.

Noncommercial cotton prohibition and requirement of commercial cotton grower participation.

Notice, §2-16-610.

Fees.

Notices, §1-3-107.

PUBLICATION —Cont'd**Grain.**

Receiver for grains stored in public warehouses.

Appointment of receivers, §2-17-406.

Improvement districts.

Commissioners of special improvement districts.

Annual reports to be published, §1-3-105.

Laws, reports and similar matters.

Cost of publication.

Printing of publication cost, §1-3-109.

Penalties for noncompliance, §1-3-109.

Penalty for failure to comply.

Printing of publication cost, §1-3-109.

Livestock.

Running at large.

Publication in addition to posting, §2-38-112.

Newspapers.

Laws, reports and similar matters.

Eligibility of newspapers to publish, §1-3-106.

General provisions, §§1-3-101 to 1-3-109.

Penalty for failure to comply, §1-3-101.

Publication in more than one newspaper, §1-3-108.

Penalties.

Laws, reports and similar matters.

Failure to comply, §1-3-101.

Printing of publication cost, §1-3-109.

Public service commission.

Orders of public service commission.

Newspaper publication, §1-3-103.

PUBLIC OFFICERS AND EMPLOYEES.**Birthdays.**

Official holiday, §1-5-101.

Compensation.

Holidays and memorial days.

Entitlement to paid holiday or equivalent time, §1-5-104.

Statutes.

Adoption of code not to affect compensation, §1-2-110.

Expenses.

Statutes.

Adoption of code not to affect expenses, §1-2-110.

PUBLIC OFFICERS AND EMPLOYEES —Cont'd**Terms of office.**

Statutes.

Adoption of code not to affect terms of office, §1-2-110.

PUBLIC SERVICE COMMISSION.**Newspapers.**

Orders to be published, §1-3-103.

Publication.

Orders of public service commission.

Newspaper publication, §1-3-103.

PURPLE MARTINS.

Designation of capitals, §1-4-121.

Q**QUARANTINE.****Agriculture.**

Emergency plant act, §§2-16-307, 2-16-308.

Animals.

Cattle, §§2-40-1001 to 2-40-1006.

Bees and honey, §2-22-112.**Boll weevil suppression eradication, §2-16-609.****Cattle.**

General provisions, §§2-40-1001 to 2-40-1006.

Governor.

Emergency plant act.

Proclamation of governor, §2-16-307.

Hog cholera.

Herds infected with or exposed to hog cholera, §2-40-706.

Horses.

Equine infectious anemia, §2-40-812.

Quarantined holding facilities.

Requirements for, §2-40-817.

Reactors, §2-40-813.

Livestock and poultry commission.

Rules and regulations, §2-40-209.

Establishment, §2-40-103.

QUARTZ CRYSTAL.

State mineral, §1-4-111.

R**RABIES.****Cattle.**

Vaccination.

Cost of vaccine, §2-40-1101.

Declaration of rabies infested area.

Duties of livestock and poultry commission, §2-40-1101.

RABIES —Cont'd**Livestock and poultry commission.**

Declaration of rabies infested area,
§2-40-1101.

Pseudorabies control and eradication program.

Levy of fees to fund, §2-40-1201.

Vaccinations.

Cost of vaccinating cattle, §2-40-1101.

RACIAL MINORITIES.**Definition of minorities in Arkansas,**

§§1-2-501 to 1-2-504.

RAILROADS.**Cattle.**

Quarantine.

Excreta.

Throwing excreta or other refuse,
§2-40-1006.

Fencing right of way, §2-40-1006.

Transporting cattle through state
permitted, §2-40-1003.

Unloading cattle beyond quarantine
line, §2-40-1006.

REAL PROPERTY.**Agricultural cooperative associations.**

Powers as to real property, §2-2-106.

Cooperative marketing associations.

Powers as to real property, §2-2-406.

RECEIVERS.**Agriculture.**

Prohibited plants or products.

Duties of receivers, §2-16-213.

Catfish processor fair practices,

§§2-6-109 to 2-6-123.

Grain.

Public warehouses.

Receiver for grain stored in public
warehouses, §§2-17-201 to
2-17-416.

Pest control.

Prohibited plants or products.

Duties of receivers, §2-16-213.

Warehouses.

Grain.

Public warehouses.

Receiver for grain stored in public
warehouses, §§2-17-201 to
2-17-416.

RECORDS.**Alcoholic beverages.**

Beer, §3-5-219.

Distillers and wholesalers of spirituous
liquors.

Tax on alcoholic liquors, §3-7-113.

RECORDS —Cont'd**Alcoholic beverages —Cont'd**

Division of alcoholic beverage control.

Authentication of records, §3-2-204.

Licensees' records, §3-2-211.

Inspection, §3-2-211.

On-premises consumption.

Inspection of premises and records,
§3-9-232.

Wine.

Incentive grants, §3-5-906.

Light wine, §3-5-219.

Subsidies, §3-5-1006.

Boll weevil suppression eradication.

Cotton growers' organizations.

Availability for inspection or audit,
§2-16-612.

Catfish promotion board.

Assessment records, §2-9-110.

Cattle.

Beef promotion and research,
§2-35-403.

Stockyards, §2-35-211.

Transportation.

One county to another, §2-35-204.

Commercial feeds, §2-37-109.**Cotton.**

Gins and ginnerers.

Penalty for failure to keep records,
§2-20-206.

Record of weights required,
§2-20-207.

Seed cotton purchased, §2-20-205.

Grain.

Public grain warehouses.

Maintenance of records, §2-17-234.

Hogs.

Transportation.

One county to another, §2-35-204.

Horses.

Transportation.

One county to another, §2-35-204.

Rice.

Research and promotion act.

Buyers, §2-20-508.

Seeds.

Arbitration of defective seed claims.

Arbitration committee.

Activities of committee, §2-23-109.

Soybeans.

Promotion.

Inspection of books and records,
§2-20-407.

Wheat promotion act.

Buyers, §2-20-607.

REGISTERED MAIL.**Certified mail.**

Use in place of registered mail,
§1-2-122.

REGISTRATION.**Bees and honey**, §2-22-110.**Catfish processor fair practices.**

Processors, §2-6-105.

Commercial feeds, §2-37-104.

Failure or refusal to register.

Prohibited acts, §2-37-108.

Fertilizers, §2-19-202.

Approval by plant board, §2-19-202.

Cancellation, §2-19-202.

Expiration, §2-19-202.

Fees, §2-19-202.

Guaranteed analysis, §2-19-202.

Required, §2-19-202.

Special fertilizer grade, §2-19-202.

Liming materials.

Contents, §2-19-306.

Expiration, §2-19-306.

Fees, §2-19-306.

Required, §2-19-306.

Seeds.Improper use of term "registered,"
§2-18-107.**Soil amendment.**Refusal of plant board to register,
§2-19-409.

Revocation, §2-19-409.

Soil amendment products, §2-19-408.

REGNAT POPULUS.**State motto**, §1-4-107.**RELIGION.****Alcoholic beverages.**

Retail liquor business.

Operation of business within certain
distance of church, §3-4-206.**REPORTS.****Agriculture.**

Emergency plant act.

Annual report of plant board,
§2-16-310.**Alcoholic beverages.**

Beer, §3-5-219.

Licensees' reports, §3-2-211.

Inspection, §3-2-211.

Nonresident beer sellers.

Failure to file prohibited, §3-5-1305.

Wine.

Light wine, §3-5-219.

Boll weevil suppression eradication.

Furnishing to plant board, §2-16-608.

Cattle.

Beef council.

Assessments, §2-35-306.

Cooperative marketing associations.

Annual report, §2-2-422.

Spreading false reports.

Penalty, §2-2-420.

REPORTS —Cont'd**Equine infectious anemia.**

Suspected untested horse.

Citizen reporting, §2-40-828.

Fertilizers.

Grades.

Mixed formulations reported on
monthly basis, §2-19-202.

Guaranteed analysis, §2-19-203.

Tonnage reports, §2-19-209.

Fire ant advisory board, §2-16-705.**Grain.**Receiver for grain stored in public
warehouses.Final report of commissioner,
§2-17-416.**Hogs.**

Cholera.

Duty to report, §2-40-704.

Investigation of hog cholera report,
§2-40-705.**Horses.**

Equine infectious anemia.

Test results, §2-40-811.

Liming materials.

Tonnage reports, §2-19-307.

Livestock shows.Accounting reports by recipients of
funds, §2-36-211.**Rice.**

Research and promotion act.

Buyers, §2-20-508.

Seeds.

Arbitration of defective seed claims.

Arbitration committee.

Activities of committee.

Filing of report with plant
board, §2-23-109.Investigation and report,
§2-23-107.**Soil amendment.**

Sales reports.

Filing, §2-19-410.

Soybeans.

Promotion.

Assessments.

Persons responsible for collecting,
§2-20-407.**Wheat promotion act.**

Buyers, §2-20-607.

RESEARCH.**Agriculture.**

Biotechnology research.

Definition of "qualified research,"
§2-8-103.

Tax credits, §2-8-105.

RESEARCH —Cont'd**Agriculture —Cont'd**

Corn and grain sorghum promotion board.

Research and extension program, §2-20-806.

Crops.

Damage or destruction of field crop products, §2-15-101.

Beef promotion and research.

General provisions, §§2-35-401 to 2-35-407.

Corn and grain sorghum promotion board.

Research and extension program, §2-20-806.

Crops.

Damage or destruction of field crop products, §2-15-101.

Equine infectious anemia.

Research facilities, prevention of infection, §2-40-829.

Horses.

Equine infectious anemia.

Research facilities, prevention of infection, §2-40-829.

Rice certification act.

Exemption from act, §2-15-207.

RESIDENCE.**Alcoholic beverages.**

Brandy.

Application for permit, §3-6-104.

RESTAURANTS.**Alcoholic beverages.**

Wine.

Restaurant or cafe, §§3-9-301 to 3-9-307.

Wine.

Restaurant or cafe, §§3-9-301 to 3-9-307.

RETALIATION.**Beer wholesalers and suppliers.**

Prohibited acts by suppliers, §3-5-1107.

Retaliatory action defined, §3-5-1102.

RETIREMENT.**Poultry.**

Poultry and egg grading program.

Retirement provisions for employees, §2-33-302.

RICE.

Certification act, §§2-15-201 to 2-15-208.

Arkansas rice certification act.

Subchapter known and cites as, §2-15-201.

RICE —Cont'd**Certification act —Cont'd**

Characteristics of commercial impact.

Defined, §2-15-202.

Notice of violations, §2-15-206.

Powers and duties of state plant board, §2-15-204.

Restrictions on selling, planting, producing, transporting, §2-15-203.

Violations, notice, relief, §2-15-206.

Penalties imposed, §2-15-208.

Civil penalties, §2-15-208.

Definitions, §2-15-202.

Powers and duties of state plant board, §2-15-204.

Research, exemption from act, §2-15-207.

Scientific review board.

Appointment by plant board, duties, §2-15-205.

Violations, notice, relief, §2-15-206.

Penalties imposed, §2-15-208.

Records.

Research and promotion act.

Buyers, §2-20-508.

Reports.

Research and promotion act.

Buyers, §2-20-508.

Research and promotion act.

Advertising.

Research, market development and advertising program.

Generally, §2-20-510.

Applicability of provisions.

Exception, §2-20-503.

Assessments.

Grown rice, §2-20-507.

Board.

Composition, §2-20-505.

Created, §2-20-505.

Duties, §2-20-505.

Members.

Qualifications, §2-20-505.

Terms, §2-20-505.

Officers, §2-20-505.

Resident agent, §2-20-505.

Rules and regulations.

Authority to establish, §2-20-505.

Buyers.

Applicability of provisions.

Exception, §2-20-503.

Reports.

Failure to file, §2-20-504.

Citation of act, §2-20-501.

Civil penalties.

Injunctions, §2-20-504.

RICE —Cont'd**Research and promotion act** —Cont'd

Funds.

Civil penalties.

Collection, §2-20-504.

Legislative intent, §2-20-502.

Purpose, §2-20-502.

Records.

Buyers, §2-20-508.

Reports.

Buyers, §2-20-508.

Research program.

Board.

Generally, §2-20-510.

Short title, §2-20-501.

Violations of provisions.

Civil penalty.

Collection, §2-20-504.

Criminal offenses.

Fines, §2-20-504.

State grain, §1-4-127.**RICE CERTIFICATION ACT**,

§§2-15-201 to 2-15-208.

RIGHT OF ENTRY.**Boll weevil suppression eradication.**

Plant board, §2-16-607.

Catfish promotion board.Inspection of assessment record,
§2-9-109.**ROBERT E. LEE'S BIRTHDAY.**

Official holiday, §1-5-101.

ROCK OF THE STATE, §1-4-111.**RUNNING AT LARGE.**

Feral hogs, §2-38-504.

Livestock, §§2-38-101 to 2-38-504.

S**SALES.****Cattle.**

Bill of sale.

Required, §2-35-212.

Fairs.

Immoral, lewd, etc., items, §2-36-103.

Fertilizers.

Blending or bulk storage facilities.

Sale of fertilizers manufactured at
unlicensed facilities.

Prohibited, §2-19-203.

Exempted transactions, §2-19-204.

Penalties.

Selling in violation of act, §2-19-201.

Stop sale order, §2-19-211.

Unregistered fertilizers.

Sale prohibited, §2-19-203.

SALES —Cont'd**Goats.**

Bill of sale.

Required, §2-35-212.

Hogs.

Bill of sale.

Required, §2-35-212.

Livestock.

Bill of sale.

Required, §2-35-212.

Impoundment of animals running at
large.Sale of unclaimed animals,
§2-38-407.**Livestock shows.**

Immoral, lewd, etc., items, §2-36-103.

Sheep.

Bill of sale.

Required, §2-35-212.

SAMPLES.

Soil amendment, §2-19-405.

SEAFOOD.Catfish promotion board, §§2-9-101 to
2-9-112.**SEALS AND SEALED
INSTRUMENTS.****Alcoholic beverages.**Division of alcoholic beverage control,
§3-2-204.

Auditor of state, §1-4-108.

Forms.

Official seals, §1-4-108.

Secretary of state, §1-4-108.

Seal of office, §1-4-108.

State of Arkansas.

Seal of state, §1-4-108.

Treasurer of state, §1-4-108.

SEARCHES AND SEIZURES.**Agriculture.**

Pests.

Plant disease, weeds or prohibited
plants brought into state
illegally, §2-16-209.**Alcoholic beverages.**Authority of enforcement agents,
§3-2-210.

Dry territories.

Prohibited acts and practices.

Authority to seize beverages,
§3-3-311.Determination of interest in seized
beverages, §3-3-313.Procedure upon seizure of
beverages, §3-3-312.Sale of confiscated beverages,
§3-3-314.

SEARCHES AND SEIZURES —Cont'd**Alcoholic beverages —Cont'd**

Dry territories —Cont'd

Prohibited acts and practices
—Cont'dSurrender of confiscated
beverages.

Failure to surrender, §3-3-315.

Enforcement of liquor laws.

Destruction of liquor.

Issuance of search warrants,
§3-2-304.

Illicit manufacture and equipment.

Seizure and forfeiture of vehicles,
§3-3-403.**Commercial feeds.**Condemnation and confiscation,
§2-37-112.**Pest control.**Insect pests, weeds or prohibited
plants, §2-16-209.**Search warrants.**

Alcoholic beverages.

Enforcement of liquor laws.

Destruction of liquor, §3-2-304.

SECRETARY OF STATE.**Flags.**Purchase of flags for distribution,
§1-4-104.Provisions in lieu of other flag
distribution laws, §1-4-104.**Seals and sealed instruments.**

Seal of office, §1-4-108.

SEEDS.**Actions.**

Arbitration of defective seed claims.

Investigation and report for
arbitration committee.

Findings as evidence, §2-23-107.

Prerequisite to legal action,
§2-23-102.Notice not typed on container or
label.Compliance with section not
required, §2-23-102.**Advertising.**

False advertising, §2-18-102.

Fees for promotion and advertising,
§2-18-105.**Aflatoxin.**

Monitoring, §2-18-109.

Rulemaking regarding, §2-18-111.

Sampling methods for monitoring,
§2-18-110.**Answers.**

Arbitration of defective seed claims.

Answers to complaints against
dealer, §2-23-102.**SEEDS —Cont'd****Arbitration of defective seed claims,
§§2-23-101 to 2-23-110.**Acceptance of arbitration committee's
recommendations.

Notice, §2-23-110.

Actions.**Evidence.**Arbitration committee's findings
as evidence, §2-23-107.Prerequisites to legal action,
§2-23-102.Notice not typed on container or
label.Compliance with section not
required, §2-23-102.Answers to complaints against dealers,
§2-23-102.**Arbitration committee.****Appointment.**

Director of plant board, §2-23-104.

Chairperson.

Calling into session, §2-23-106.

Duty to conduct meeting and
deliberations, §2-23-104.

Election, §2-23-104.

Composition, §2-23-104.

Damages.Recommendation of money
damages, §2-23-105.**Director of plant board.**

Appointment, §2-23-104.

Calling into session, §2-23-106.

Secretary, §2-23-104.

Evidence.

Findings as evidence, §2-23-107.

Ex officio members, §2-23-104.

Expenses.

Reimbursement, §2-23-104.

Governor.Members and alternatives
confirmed by, §2-23-104.**Hearings.**

Informal hearings, §2-23-106.

Powers, §2-23-108.

Investigations, §2-23-107.

Powers, §2-23-108.

Meetings, §2-23-104.

Calling into session, §2-23-106.

Members, §2-23-104.

Number of members, §2-23-104.

Powers.

Investigative powers, §2-23-108.

Purposes, §2-23-105.

Recommendations for members.

Recommending organization to
submit, §2-23-104.

SEEDS —Cont'd**Arbitration of defective seed claims —Cont'd****Arbitration committee —Cont'd****Records.**

Activities of committee, §2-23-109.

Duties of secretary, §2-23-104.

Reports.

Activities of committee.

Filing with plant board,
§2-23-109.

Investigations, §2-23-107.

Secretary.

Director of plant board, §2-23-104.

Duty to keep accurate and correct
records, §2-23-104.

Terms of members, §2-23-104.

Complaints against dealers.

Filing fees, §2-23-102.

Sworn complaint as prerequisite to
legal action, §2-23-102.Notice not printed or typed on
container or label.Compliance not required,
§2-23-102.**Damages.****Arbitration committee.**Recommendation of money
damages, §2-23-105.**Definitions, §2-23-101.****Evidence.****Arbitration committee.**

Findings as evidence, §2-23-107.

Fees.**Complaints against dealers.**

Filing fee, §2-23-102.

Investigations requested by dealers.

Filing fees, §2-23-103.

Forms.**Notice.**Of mandatory arbitration,
§2-23-102.**Governor.****Arbitration committee.**Members and alternatives
confirmed by, §2-23-104.**Hearings.****Arbitration committee.**

Informal hearings, §2-23-106.

Powers, §2-23-108.

Investigations.

Arbitration committee, §2-23-107.

Powers, §2-23-108.

Request by dealer against whom
suit brought, §2-23-103.

Filing fee, §2-23-103.

Requirements, §2-23-103.

SEEDS —Cont'd**Arbitration of defective seed claims —Cont'd****Notice.**Acceptance or rejection of
arbitration committee's
recommendations, §2-23-110.**Arbitration committee.**

Informal hearings, §2-23-108.

Prerequisites to legal action.

Form, §2-23-102.

Typed on seed container or label,
§2-23-102.Prerequisites to legal action,
§2-23-102.Notice not typed on container or
label.Compliance with section not
required, §2-23-102.**Records.****Arbitration committee.**

Activities of committee, §2-23-109.

Duty of secretary, §2-23-104.

Rejection of arbitration committee's
recommendations.

Notice, §2-23-110.

Reports.**Arbitration committee.**

Activities of committee.

Filing with plant board,
§2-23-109.

Investigations, §2-23-107.

Time.**Answers.**To complaints against dealers,
§2-23-102.Complaints against dealers,
§2-23-102.Notice of acceptance or rejection of
arbitration committee's
recommendations, §2-23-110.**Board.****Arbitration of defective seed claims.**

Answer to complaint against dealer.

Filing with director, §2-23-102.

Arbitration committee.Calling into session by director,
§2-23-106.

Director as secretary, §2-23-104.

Reports filed with board,
§2-23-109.

Board defined, §2-23-101.

Complaints against dealers.

Filing with director, §2-23-102.

Director defined, §2-23-101.

Investigations requested by dealers.

Referral by director to arbitration
committee, §2-23-103.

SEEDS —Cont'd**Board —Cont'd**

- Certification by board, §2-18-103.
- Cooperation with other agencies, §2-18-108.
- Defined, §2-18-101.
- Investigations, §2-18-103.
- Rules and regulations.
- Promulgation by board, §2-18-104.
- State departments and agencies.
- Cooperation with other agencies, §2-18-108.

Certification.

- Fees, §2-18-105.
- Improper use of term "certified," §2-18-107.
- Offenses relating to certification, §2-18-102.
- Revocation of certificate, §2-18-102.

Complaints.

- Arbitration of defective seed claims.
- Complaints against dealers.
- Compliance with section not required where notice not typed on container or label, §2-23-102.
- Filing fee, §2-23-102.
- Prerequisite to legal action, §2-23-102.

Cotton.

- Gins.
- Disposition of seeds, §2-20-203.

Damages.

- Arbitration of defective seed claims.
- Arbitration committee.
- Recommendation of money damages, §2-23-105.

Definitions, §2-18-101.

- Arbitration of defective seed claims, §2-23-101.

Evidence.

- Arbitration of defective seed claims.
- Arbitration committee.
- Investigation and report.
- Findings as evidence, §2-23-107.

Fees.

- Arbitration of defective seed claims.
- Complaints against dealers.
- Filing fees, §2-23-102.
- Investigations requested by dealers.
- Filing fee, §2-23-103.
- Inspection, certification, promotion and advertising, §2-18-105.

Forms.

- Arbitration of defective seed claims.
- Notice of mandatory arbitration, §2-23-102.

SEEDS —Cont'd**Ginseng.**

- General provisions, §§2-20-701 to 2-20-705.

Hearings.

- Arbitration committee.
- Informal hearing, §2-23-106.
- Investigative powers, §2-23-108.

Inspections.

- Certificates of inspection, §2-18-106.
- Fees, §2-18-105.

Investigations.

- Arbitration of defective seed claims.
- Arbitration committee, §2-23-107.
- Powers, §2-23-108.
- Requests by dealers, §2-23-103.
- Filing fee, §2-23-103.
- Plant board, §2-18-103.

Notice.

- Arbitration of defective seed claims.
- Acceptance or rejection of arbitration committee's recommendation, §2-23-110.
- Mandatory arbitration.
- Prerequisite to legal action, §2-23-102.
- Form, §2-23-102.

Penalties.

- False advertising, §2-18-102.

Person.

- Defined, §2-18-101.

Records.

- Arbitration of defective seed claims.
- Arbitration committee.
- Activities of committee, §2-23-109.

Registration.

- Improper use of term "registered," §2-18-107.

Reports.

- Arbitration of defective seed claims.
- Arbitration committee.
- Activities of committee.
- Filing of report with plant board, §2-23-109.
- Investigation and report, §2-23-107.

Rules and regulations.

- Board.
- Promulgation by board, §2-18-104.

State departments and agencies.

- Cooperation of board with other agencies, §2-18-108.

Time.

- Arbitration of defective seed claims.
- Answers to complaints against dealers, §2-23-102.
- Complaints against dealers.
- Filing, §2-23-102.

SEEDS —Cont'd**Time —Cont'd**

Arbitration of defective seed claims
—Cont'd

Notice of acceptance or rejection of
arbitration committee's
recommendation, §2-23-110.

United States.

Cooperation of board with other
agencies, §2-18-108.

**SENATOR HATTIE W. CARAWAY
DAY, §1-5-106.****SENTENCING.****Alcoholic beverages.**

Prohibited acts and practices,
§3-3-102.

Hogs.

Release of feral hogs into the wild,
§2-38-504.

SERVICE OF PROCESS.**Certified mail, §1-2-122.****Grain.**

Receiver for grains stored in public
warehouses.

Notice of hearing on petition filed by
commissioner.

Delay in service, §2-17-404.

Mail.

Certified mail.

Alternative, §1-2-122.

Registered mail, §1-2-122.

Registered mail, §1-2-122.**Wheat promotion act.**

Wheat promotion board.

Resident agent for service,
§2-20-610.

SHEEP.**Brands and marks.**

General provisions, §§2-34-101 to
2-34-213.

Carriers.

Transfer record.

Receiving without copy, §2-35-209.

Penalties.

Transfer record.

Violations of provisions, §2-35-203.

Perjury.

Transfer records, §2-35-207.

Sales.

Bill of sale.

Required, §2-35-212.

Transportation.

Animals named in act include those
dead or alive, §2-35-201.

SHEEP —Cont'd**Transportation —Cont'd**

Transfer record.

Acknowledgments.

Fees of persons taking
acknowledgment on record,
§2-35-208.

Form, §2-35-205.

Inspection, §2-35-210.

Penalties, §2-35-203.

Perjury.

Applicability to records, §2-35-207.

Receiving livestock without copy,
§2-35-209.

SHERIFFS.**Alcoholic beverages.**

Enforcement of liquor laws.

Temporary officer to act in place of
sheriff, §3-2-301.

Livestock.

Brands and marks.

State brand book.

Distribution to sheriffs, §2-34-210.

Running at large.

Impoundment of animals running at
large.

Delivery to enclosure, §2-38-404.

Notice of delinquency in payment.

Service by sheriff, §2-38-121.

SHOWS.**Beer festival permits, §3-5-105.****SILAS HUNT DAY, §1-5-106.****SLAVERY.****Juneteenth independence day,
§1-5-114.****SLOT MACHINES.****Alcoholic beverage permitted
premises.**

Gambling devices, gaming devices or
slot machines kept on, §3-9-236.

SOIL AMENDMENT.**Administration of act.**

Authority of plant board, §2-19-404.

Adulterated.

Defined, §2-19-402.

Bulk.

Defined, §2-19-402.

Citation of act, §2-19-401.**Claims.**

Plant board may require proof of
claims, §2-19-407.

Definitions, §2-19-402.**Deposit of money received, §2-19-414.****Distribute.**

Defined, §2-19-402.

SOIL AMENDMENT —Cont'd**Distributor.**

Defined, §2-19-402.

Fees.

Inspection fees.

Payment by registrant, §2-19-410.

Ingredients.

Active ingredient.

Defined, §2-19-402.

Inert ingredient.

Defined, §2-19-402.

Injunctions.

Violations of provisions, §2-19-413.

Inspections.

Authorized, §2-19-405.

Fees.

Payment to plant board, §2-19-410.

Labeling.

Defined, §2-19-402.

Labels.

Approval by board, §2-19-407.

Defined, §2-19-402.

Requirements, §2-19-407.

Manufacturers.

Defined, §2-19-402.

Misbranded.

Defined, §2-19-402.

Name.

Defined, §2-19-402.

Orders.

Stop-sale, use or removal orders,
§2-19-412.

Percentage.

Defined, §2-19-402.

Person.

Defined, §2-19-402.

Plant board.

Administration of act, §2-19-404.

Claims.

Proof of claims, §2-19-407.

Inspections.

Authorized, §2-19-405.

Labels.

Approval of labels, §2-19-407.

Orders.

Stop-sale, use or removal order.

Authorized, §2-19-412.

Remittance of moneys received,
§2-19-414.

Rules and regulations.

Adoption, §2-19-406.

Stop-sale orders.

Authorized, §2-19-412.

Prohibited acts, §2-19-411.**Registrants.**

Defined, §2-19-402.

Registration.

Refusal of plant board to register,
§2-19-409.

SOIL AMENDMENT —Cont'd**Registration —Cont'd**

Revocation, §2-19-409.

Soil amendment products, §2-19-408.

Reports.

Sales reports.

Filing, §2-19-410.

Rules and regulations.

Adoption by plant board, §2-19-406.

Samples.

Authorized, §2-19-405.

Short title of act, §2-19-401.**Soil amendment products.**

Registration, §2-19-408.

Refusal of board to register,
§2-19-409.

Title.

Short title of act, §2-19-401.

Violations.

Injunctions, §2-19-413.

Misdemeanors, §2-19-403.

Prohibited acts constituting, §2-19-411.

SOLICITATION.**Alcoholic beverages.**

Board of alcoholic beverage control.

Acceptance of bribe or solicitation
prohibited, §3-2-208.

Division of alcoholic beverage control.

Acceptance of bribe or solicitation
prohibited, §3-2-208.

Dry territories.

Prohibited acts and practices,
§3-3-310.

Enforcement division of alcoholic
beverage control.

Acceptance of bribe or solicitation
prohibited, §3-2-208.

SONGS OF STATE, §1-4-116.**SORGHUM.****Corn and grain sorghum promotion,**

§§2-20-801 to 2-20-806.

**SOUTHEAST PURPLE MARTIN
CAPITAL.**

Designation, §1-4-121.

SOYBEANS.**Confidentiality of information.**

Promotion.

Information obtained from books,
records or reports required,
§2-20-407.

Definitions.

Promotion, §2-20-402.

Deposits.

Promotion assessment, §2-20-406.

Initiative and referendum.

Promotion.

Assessments, §2-20-406.

SOYBEANS —Cont'd**Inspections.****Promotion.**

Books and records, §2-20-407.

Promotion.

Administration of chapter, §2-20-409.

Assessments.**Delinquent assessments.**

Collection, §2-20-403.

Deposit of proceeds, §2-20-406.

Failure to pay.

Penalty, §2-20-403.

Grown soybeans, §2-20-406.

Imposed, §2-20-406.

Injunctive relief.

Persons owing assessment or penalties.

Enjoining person from operating business, §2-20-403.

Inspection of premises.

Refusal by persons required to pay assessment.

Misdemeanor, §2-20-403.

Rate, §2-20-406.

Referendum, §2-20-406.

Refunds to producers, §2-20-408.

Application, §2-20-408.

Extent, §2-20-408.

Refusal to allow full inspection of premises.

Persons required to pay assessment, §2-20-403.

Remittance, §2-20-406.

Reports.

Persons responsible for collecting, §2-20-407.

Board.

Administration of chapter, §2-20-409.

Assessments.

Power, §2-20-405.

Creation, §2-20-404.

Office.

Principal place of office, §2-20-404.

Organization, §2-20-404.

Powers, §§2-20-405, 2-20-409.

Rules and regulations, §2-20-404.

Selection of members, §2-20-404.

Terms of office, §2-20-404.

Use of funds collected.

Restriction, §2-20-405.

Confidentiality of information.

Books, records or reports required to be filed, §2-20-407.

Definitions, §2-20-402.**Deposits.**

Assessments, §2-20-406.

SOYBEANS —Cont'd**Promotion —Cont'd****Inspection of premises.**

Books and records, §2-20-407.

Intent of act, §2-20-401.

Power of board, §2-20-405.

Purpose of act, §2-20-401.

Records.

Inspection of books and records, §2-20-407.

Referendum.

Assessments, §2-20-406.

Reports.**Assessments.**

Persons responsible for collecting, §2-20-407.

Use of funds, §2-20-409.

Records.**Promotion.**

Inspection of books and records, §2-20-407.

Reports.**Promotion.****Assessments.**

Persons responsible for collecting, §2-20-407.

Rules and regulations.

Promotion board, §2-20-404.

SQUARE DANCE.

State folk dance, §1-4-120.

STATE BEVERAGE.

Milk, §1-4-112.

STATE BIRD.

Designation, §1-4-118.

STATE BUTTERFLY, §1-4-126.

STATE COOKING VESSEL.

Dutch oven, §1-4-125.

STATE DEPARTMENTS AND AGENCIES.**Livestock and poultry commission.**

Cooperation with state agencies, §2-33-305.

Livestock marketing.

Cooperation with state agencies, §2-33-205.

Seeds.

Cooperation of board with other agencies, §2-18-108.

STATE FLOWER.

Apple blossom, §1-4-109.

STATE GEM.

Diamond, §1-4-111.

STATE GRAIN, §1-4-127.

STATE MAMMAL, §1-4-122.

STATE MINERAL.

Quartz crystal, §1-4-111.

STATE MOTTO.

Regnat populus, §1-4-107.

STATE NAME.

Nickname, §1-4-106.

Pronunciation, §1-4-105.

STATE OF ARKANSAS.**Alcoholic beverages.**

Police power of state.

On-premises consumption.

Rules and regulations, §3-9-205.

Anthem of state, §1-4-116.

Beverage of state.

Milk, §1-4-112.

Boundaries.

Extension of western boundary line,
§1-1-101.

Western boundary line.

Extension, §1-1-101.

Butterfly of state, §1-4-126.

Dance of state.

Square dance, §1-4-120.

English language.

Declared official language, §1-4-117.

Flower of state, §1-4-109.

Fruit of state.

Sale of Arkansas vine ripe pink
tomato, §1-4-115.

Gem of state, §1-4-111.

Grain, state, §1-4-127.

Historic cooking vessel of state,
§1-4-125.

Holidays and memorial days.

General provisions, §§1-5-101 to
1-5-113.

Insect of state, §1-4-110.

Language of state.

English language declared official
language, §1-4-117.

Mineral of state, §1-4-111.

Motto of state, §1-4-107.

Musical instrument of state, §1-4-113.

Names.

Nickname, §1-4-106.

Pronunciation, §1-4-105.

Nickname, §1-4-106.

Poet laureate.

Appointment, §1-4-114.

Pronunciation of state name,
§1-4-105.

Rock of state, §1-4-111.

Seal of state, §1-4-108.

Soil of state, §1-4-124.

Songs of state, §1-4-116.

Vegetable of state.

Sale of Arkansas vine ripe pink
tomato, §1-4-115.

STATE POET, §1-4-114.

STATE POLICE.**Alcoholic beverages.**

Enforcement of liquor laws.

Powers and duties of state police,
§3-2-303.

Livestock.

Running at large.

Impoundment of animals running at
large.

Delivery to enclosure, §2-38-404.

STATE ROCK.

Bauxite, §1-4-111.

STATES.**Alcoholic beverages.**

Wine.

Disaster relief.

Acquisition of ingredients from
outside state, §3-5-803.

STATE SOIL, §1-4-124.

STATE TREE.

Designated, §1-4-119.

STATUTE OF LIMITATIONS.**Statutes.**

Adoption of code not to toll limitations,
§1-2-112.

Tolling of statute.

Adoption of code not to toll limitations,
§1-2-112.

STATUTES.**Actions.**

Effect of adoption of code on existing
actions, §1-2-111.

Repeal.

Existing actions not affected by
repeal, §1-2-120.

Adoption of code, §1-2-102.

Certain acts.

Effect, §1-2-105.

Constitutionally invalid acts.

Effect, §1-2-106.

Existing rights, liabilities, contracts,
actions, etc.

Effect of adoption of code generally,
§1-2-111.

Limitation of actions.

Adoption of code not to toll
limitations, §1-2-112.

Public officers and employees.

Terms of office, compensation,
expenses, etc., not affected,
§1-2-110.

Rules and regulations.

Effect of adoption generally,
§1-2-108.

STATUTES —Cont'd**Adoption of code —Cont'd**

Rules and regulations —Cont'd

Invalid, unauthorized or defective rules and regulations.

Adoption of code not to validate, §1-2-109.

Time limitations.

Adoption of code not to toll limitations, §1-2-112.

Amendments to code, §1-2-116.**Circuit courts.**

Construction of statute by circuit court.

Effect, §1-2-206.

Citation of code, §1-2-113.**Clear and unambiguous language.**

Required, §1-2-121.

Code revisor.

Employment by bureau of legislative research, §1-2-302.

Executive director of code revision commission to become, §1-2-303.

Constitutionally invalid acts.

Adoption of code not to validate, §1-2-106.

Construction and interpretation.

Adoption of code.

Certain acts.

Effect, §1-2-105.

Constitutionally invalid acts.

Effect, §1-2-106.

Existing rights, liabilities, contracts, actions, etc.

Effect generally, §1-2-111.

Limitation of actions.

Adoption of code not to toll limitations, §1-2-112.

Public officers and employees.

Terms of office, compensation, expenses, etc., not affected, §1-2-110.

Rules and regulations.

Effect of adoption generally, §1-2-108.

Invalid, unauthorized or defective rules and regulations.

Adoption of code not to validate, §1-2-109.

Time limitations.

Adoption not to toll limitations, §1-2-112.

Applicability of rules of construction.

Civil and criminal cases, §1-2-201.

Circuit courts.

Effect of construction of statute by circuit court, §1-2-206.

STATUTES —Cont'd**Construction and interpretation —Cont'd**

Classification of code not to be construed, §1-2-115.

Designation of code, §1-2-113.

Existing rights, liabilities, contracts, actions, etc.

Effect of adoption of code generally, §1-2-111.

Gender.

Masculine includes feminine, §1-2-203.

"Hereafter," §1-2-204.

"Heretofore," §1-2-204.

Identical acts, §1-2-207.

Liberal construction, §1-2-202.

Limitation of actions.

Adoption of code not to toll limitations, §1-2-112.

Notes, headings, etc., §1-2-115.

Omission of validating and curative acts from code, §1-2-104.

Organization of code not to be construed, §1-2-115.

Plural words, §1-2-203.

Public officers and employees.

Adoption of code not to affect terms of office, compensation, expenses, etc., §1-2-110.

References to code titles, subtitles, chapters, etc., §1-2-114.

Repeals, §1-2-103.

Exceptions, §1-2-103.

Repealed acts not revived by code, §1-2-107.

Rules and regulations.

Effect of adoption of code generally, §1-2-108.

Invalid, unauthorized or defective rules and regulations.

Adoption of code not to validate, §1-2-109.

Severability of provisions, §1-2-205.

Code provisions, §1-2-117.

Singular words, §1-2-203.

Subject matter similarities, §1-2-207.

Time limitations.

Adoption of code not to toll limitations, §1-2-112.

Contracts.

Effect of adoption of code on existing contracts, §1-2-111.

Criminal law and procedure.

Construction and interpretation.

Applicability of rules to criminal cases, §1-2-201.

STATUTES —Cont'd**Criminal law and procedure —Cont'd**

- Repeal of criminal or penal statute.
- Effect of offenses committed,
§1-2-120.

Curative acts.

- Omission from code.
- Construction and interpretation,
§1-2-104.

Date.

- Effective date of code, §1-2-118.

Designation of code, §1-2-113.**Disabilities, persons with.**

- Respectful language in referencing,
§1-2-124.

Effective date of code, §1-2-118.**Electronic version of code.**

- Printed code precedence over
electronic version, §1-2-123.

Enactment of code, §1-2-102.

- Certain acts.
- Effect, §1-2-105.
- Constitutionally invalid acts.
- Effect, §1-2-106.
- Existing rights, liabilities, contracts,
actions, etc.
- Effect of adoption of code generally,
§1-2-111.

Limitation of actions.

- Adoption of code not to toll
limitations, §1-2-112.

Public officers and employees.

- Terms of office, compensation,
expenses, etc., not affected,
§1-2-110.

Rules and regulations.

- Effect of enactment generally,
§1-2-108.
- Invalid, unauthorized or defective
rules and regulations.
- Adoption of code not to validate,
§1-2-109.

Time limitations.

- Adoption of code not to toll
limitations, §1-2-112.

English statute law.

- Adoption, §1-2-119.

Gender.

- Masculine gender includes feminine,
§1-2-203.

Identical acts.

- Last repeals earlier, §1-2-207.

Intent.

- Legislative intent of code, §1-2-101.

Legislative intent of code, §1-2-101.**Liability.**

- Effect of adoption of code on existing
rights and liabilities, §1-2-111.

STATUTES —Cont'd**Limitation of actions.**

- Adoption of code not to toll limitations,
§1-2-112.

Number.

- Plural words include singular,
§1-2-203.
- Singular words, §1-2-203.

Plural words.

- Plural includes singular, §1-2-203.

Printed version of code.

- Precedence over electronic version,
§1-2-123.

Public officers and employees.

- Adoption of code not to affect terms of
office, compensation, expenses,
etc., §1-2-110.

References.

- Titles, subtitles, chapters, etc., of code,
§1-2-114.

Repeal.

- Effect.
- Actions.
- Existing actions not affected by
repeal, §1-2-120.
- Criminal or penal statute.
- Effect of repeal on offenses
committed, §1-2-120.
- Existing actions not affected by
repeal, §1-2-120.
- Repealing statute, §1-2-120.
- Prior laws, §1-2-103.
- Exceptions, §1-2-103.
- Repealed acts not revived by code,
§1-2-107.
- Repealing statute.
- Effect of repeal, §1-2-120.

Rules and regulations.

- Effect of adoption of code generally,
§1-2-108.
- Invalid, unauthorized or defective
rules and regulations.
- Adoption of code not to validate,
§1-2-109.

Severability of provisions, §1-2-205.

- Code provisions, §1-2-117.

Subject matter similarities.

- Act interpretation, §1-2-207.

Time.

- Limitations of time.
- Adoption of code not to toll
limitations, §1-2-112.

Validating acts.

- Omission from code.
- Construction and interpretation,
§1-2-104.

STOCK AND STOCKHOLDERS.**Agricultural cooperative associations.**

Bylaws.

Quorum for stockholders' meetings.

Amending bylaws, §2-2-110.

Certificates of stock.

Transferability, §2-2-107.

Common stock.

Amount owned, §2-2-114.

Matters referred to entire membership, §2-2-115.

Preferred stock.

Issuance, §2-2-114.

Redemption, §2-2-114.

Voting, §2-2-114.

Alcoholic beverages.

Local option.

Time allowed to dispose of stock after local option election, §3-8-102.

Cooperative marketing associations.

Amount of common stock allowed, §2-2-417.

Issuance of common stock, §2-2-407.

Issuance of preferred stock, §2-2-417.

Matters referred to stockholders, §2-2-418.

Payment required, §2-2-417.

Purchase of common stock by association, §2-2-417.

Purchase of stock in another corporation or association, §2-2-421.

Transfer of common stock, §2-2-417.

Votes, §2-2-417.

STORAGE.

Alcoholic beverages, §3-5-216.

STRAWBERRIES.**Labeling of fruits and vegetables for interstate shipment.**

Products to which act applies, §2-20-303.

SUBPOENAS.**Alcoholic beverages.**

Board of alcoholic beverage control.

Conducting or hearing appeals, §3-2-215.

Livestock and poultry commission.

Disease or pest control and eradication.

Power of subpoena, §2-40-203.

Pesticides.

Plant board.

Power of plant board, §2-16-415.

SUBSIDIES.**Wines.**

General provisions, §§3-5-1001 to 3-5-1007.

SUNDAY.**Alcoholic beverages.**

Exceptions to prohibition, §3-3-210.

Permitted sales, §3-3-210.

Prohibited acts and practices.

Sales on Sunday, §3-3-210.

Retail deliveries on Sunday, §3-3-210.

Sales on Sunday, §3-3-210.

Sunday beer and wine permit, §§3-9-501 to 3-9-507.

Holidays.

Succeeding Monday to be legal holiday when holiday falls on Sunday, §1-5-105.

SUPREME COURT.**Flags.**

Lowering of state flag.

Death of members of supreme court, §1-4-103.

SWINE.**Feeder pig and feeder calf grading program**, §2-33-204.**T****TAXATION.****Agricultural cooperative associations.**

Compensation tax act.

Associations subject to, §2-2-123.

Agriculture.

Biotechnology development and training.

Tax credits, §§2-8-103 to 2-8-108.

Alcoholic beverages.

Private clubs.

Collection of delinquent state and local taxes, §3-9-229.

Special retail tax, §§3-7-201 to 3-7-205.

Cooperative marketing associations.

Exemption from franchise or license tax, §2-2-427.

Native breweries, §3-5-1408.**Refunds.**

Alcoholic beverages.

Wrongful collections of tax, §3-4-503.

TEACHERS.**Holidays.**

Arkansas teachers day, §1-5-106.

TESTS.**Pesticides.**

Full description of tests given and results, §2-16-407.

THANKSGIVING DAY.

Official holiday, §1-5-101.

THISTLE CONTROL AND ERADICATION.**Assessments.**

Annual assessment, §2-16-801.

Interagency cooperation, §2-16-802.

TICK CONTROL.

Cost-sharing program, §2-40-902.

Counties.

Agricultural extension service.

Assistance in receiving and processing applications, §2-40-903.

Dipping.

Arsenical dip, §2-40-904.

Dipping vats, §2-40-905.

Legislative declaration.

Purpose of provisions, §2-40-901.

Purpose of provisions, §2-40-901.

Rules and regulations, §2-40-903.

Stock range rider, §2-40-906.

Appointment, §2-40-906.

Compensation, §2-40-906.

TIME.**Grain.**

Receiver for grain stored in public warehouse.

Filing claims, §2-17-410.

Seeds.

Arbitration of defective seed claims.

Answers to complaints against dealers, §2-23-102.

Complaints against dealers.

Filing, §2-23-102.

Notice of acceptance or rejection of arbitration committee's recommendation, §2-23-110.

Statutes.

Limitations of time.

Adoption of code not to toll limitations, §1-2-112.

TOMATOES.

Labeling of fruits and vegetables for interstate shipment.

Products to which act applies, §2-20-303.

TRADE SECRETS.**Pesticides.**

Protection, §2-16-418.

TRANSCRIPTS.**Alcoholic beverages.**

Proceedings before director of alcoholic beverage control division.

Transcript fees, §3-2-217.

TRANSPORTATION.**Agriculture.**

Sale, shipment or disposal of products or plants.

Certificate of inspection, §2-16-210.

Plant diseases.

Transportation into state prohibited, §2-16-209.

Weeds.

Transportation into state, §2-16-209.

TREASURER OF STATE.

Seal of office, §1-4-108.

TREES AND TIMBER.**Cedar trees.**

Compensation for trees destroyed, §2-16-101.

Presentation of claims to county court, §2-16-101.

Claims for destroyed trees.

Presentation to county court, §2-16-101.

Compensation for trees destroyed,

§2-16-101.

Pear trees.

Compensation for trees destroyed, §2-16-101.

Presentation of claims to county court, §2-16-101.

Plant board.

Compensation for trees destroyed by order and direction of board, §2-16-101.

State tree.

Designation, §1-4-119.

TRESPASS.**Feral hogs.**

Hunting, §2-38-502.

TROUT CAPITAL OF THE U.S.A.

Designation, §1-4-123.

TURF GRASS.

Certification by plant board, §2-16-109.

U**UNIFORM LAWS.****Commission on uniform state laws.**

Appointment of members, §1-2-401.

Filling vacancies, §1-2-401.

Composition, §1-2-401.

UNIFORM LAWS —Cont'd**Commission on uniform state laws**
—Cont'd

- Creation, §1-2-401.
- Duties, §1-2-403.
- Meetings, §1-2-402.
- National conference of commissioners on uniform state laws.
- Attendance by commissioners, §1-2-403.
- Number of members, §1-2-401.
- Officers, §1-2-402.
- Terms of members, §1-2-401.
- Vacancies.
- Appointments to fill, §1-2-401.

UNITED STATES.**Agriculture.**

- Alligator weed.
- Plant board.
- Agreements to hold United States free from claims, §2-16-103.
- Corps of engineers.
- Alligator weed.
- Agreements to hold corps of engineers free claim, §2-16-103.
- Grading of products and containers.
- Cooperation of board with United States, §2-20-106.
- Federal standards.
- Adoption, §2-20-106.
- Labeling of fruits and vegetables for interstate shipment.
- United States grades.
- Adoption, §2-20-303.

Alcoholic beverages.

- Licenses.
- Sale of liquor or beer on federal license without state license, §3-3-215.
- Military sales.
- Taxation.
- Payment by wholesalers and importers.
- Rules and regulations, §3-7-307.

Wine.

- Subsidies.
- Federal legislation obviating native wine tax.
- Program to be established in event of, §3-5-1003.
- Implementation of subchapter dependent on federal legislation, §3-5-1002.

Livestock and poultry commission.

- Agreements with federal department, §2-33-306.

UNITED STATES —Cont'd**Livestock and poultry commission**
—Cont'd

- Cooperation with federal agencies, §2-33-305.
- Livestock marketing.
- Cooperation with federal agencies, §2-33-205.

Pesticides.

- Plant board may cooperate with federal government, §2-16-416.

Seeds.

- Cooperation of board with other agencies, §2-18-108.

Weeds.

- Alligator weed.
- Plant board.
- Agreements to free United States from claims, §2-16-103.

UNIVERSITIES AND COLLEGES.**Holidays.**

- Employees of institutions of higher learning.
- Working on holidays may be required, §1-5-102.

UNIVERSITY OF ARKANSAS.**Agricultural experiment stations.**

- Director.
- Fire ant advisory board reports, §2-16-705.

Fire ants.

- Advisory board reports, §2-16-705.
- Research money, §2-16-701.

Cooperative extension services.

- Fire ant poison cost sharing program.
- Duties, §2-16-105.

V**VACCINATION OF ANIMALS.****Anthrax spore vaccine.**

- Sale.
- Advice and consent of state veterinarian, §2-40-108.

VEGETABLES.**Labeling of fruits and vegetables for interstate shipment, §§2-20-301 to 2-20-310.****State fruit and vegetable.**

- Sale of Arkansas vine ripe pink tomato, §1-4-115.

Wine.

- Importation of fruits and vegetables for use in local wine, §3-5-605.

VENUE.**Alcoholic beverages.**

Wholesalers' protection from arbitrary actions of suppliers.

Civil action for violations, §3-5-1106.

Commercial feeds.

Appeal of actions, orders or rulings of board, §2-37-113.

Grain.

Public grain warehouses.

Suspension, cancellation or revocation of license, §2-17-215.

VETERANS DAY.

Official holiday, §1-5-101.

VETERINARIANS.**State veterinarian.**

Anthrax spore vaccine.

Sales.

Advice and consent of state veterinarian, §2-40-108.

Blood test training program.

Design and conduct of program, §2-40-205.

Inspection of livestock markets, §2-40-208.

Livestock markets.

Inspection, §2-40-208.

W**WAIVER.****Alcoholic beverages.**

Wholesalers' protection from arbitrary actions of suppliers.

Waiver of rights prohibited, §3-5-1105.

WAREHOUSES.**Alcoholic beverages.**

Beer.

Warehousing of beer, §3-5-216.

Wine.

Light wines.

Warehousing of light wines, §3-5-216.

Cooperative marketing associations.

Interest in other corporations or associations, §2-2-423.

Grain.

Receivers for grain stored in public warehouses, §§2-17-401 to 2-17-416.

Receivers.

Grain.

Receiver for grain stored in public warehouses, §§2-17-401 to 2-17-416.

WARRANTS.**Boll weevil suppression eradication.**

Right of entry.

Issuance by judge, §2-16-607.

WASHINGTON'S BIRTHDAY.

Official holiday, §1-5-101.

WATERS AND WATERCOURSES.**Irrigation companies.**

Discharge of center pivot irrigation water onto highways, §2-1-101.

WEEDS.**Alligator weed.**

Plant board.

Agreements to hold United States free from claims for operations to control alligator weed, §2-16-103.

Johnson grass control and eradication, §§2-16-501 to 2-16-511.

Noxious weeds.

Transportation into state.

Prohibited, §2-16-209.

Transportation into state.

Prohibited, §2-16-209.

United States.

Alligator weed.

Agreements to hold United States free from claims, §2-16-103.

WEIGHTS AND MEASURES.**Catfish processor fair practices.**

Weighing catfish at time of delivery to processor, §2-6-107.

Scales used to weigh, §2-6-107.

Cotton.

Gins.

Failure to keep or exhibit books, §2-20-208.

Record of weights required, §2-20-207.

Grain.

Public grain warehouses.

Test of scales, §2-17-235.

WHEAT PROMOTION ACT.**Agents.**

Wheat promotion board.

Resident agent for service of process, §2-20-610.

Applicability of provisions, §2-20-602.

Assessments.

Grown wheat, §2-20-606.

Refunds to producers, §2-20-608.

Board.

Composition, §2-20-604.

Created, §2-20-604.

Duties, §2-20-604.

WHEAT PROMOTION ACT —Cont'd**Board —Cont'd**

Members.

Qualifications, §2-20-604.

Terms, §2-20-604.

Officers, §2-20-604.

Referendum in each county, §2-20-605.

Resident agent for service of process,
§2-20-610.

Rules and regulations.

Authority to establish, §2-20-604.

Buyers.

Applicability of provisions, §2-20-602.

Records and other documentation,
§2-20-607.**Elections.**

Referendum in each county, §2-20-605.

Funds.

Civil penalties.

Collection, §2-20-603.

Criminal penalties.

Fines, §2-20-603.

Referenda.

Reimbursement for costs of holding
referenda, §2-20-609.

Research program.

Use of funds, §2-20-609.

Legislative intent, §2-20-601.**Purpose, §2-20-601.****Records.**

Buyers, §2-20-607.

Reports.

Buyers, §2-20-607.

Research program.

Funds.

Use of funds, §2-20-609.

**Resident agent of wheat promotion
board, §2-20-610.****Rules and regulations.**

Board.

Authority to establish, §2-20-604.

Service of process.

Wheat promotion board.

Resident agent for service,
§2-20-610.**Violations of provisions.**

Civil penalties, §2-20-603.

Criminal penalties, §2-20-603.

Injunctions, §2-20-603.

WHITE CANE SAFETY DAY.**Governor's proclamation regarding,**
§1-5-108.**WILD BOARS.****Feral hogs, §§2-38-501 to 2-38-504.****WINE.****General provisions, §§3-5-601 to**
3-5-1609.**Light wine.**General provisions, §§3-5-201 to
3-5-226.**WITNESSES.****Agriculture.**

Emergency plant act.

Power of board to summon
witnesses, §2-16-306.**Alcoholic beverages.**

Board of alcoholic beverage control.

Conducting or hearing appeals,
§3-2-215.**Fences.**Testimony of disinterested
householders, §2-39-107.**WRECKS.****Alcoholic beverages.**Beer involved in fire, wreck or
casualty.

Labeling of beer, §3-4-104.

WRITS.**Livestock.**

Drovers.

Writ of detention.

Form, §2-34-304.

Y**YOUNG AND BEGINNING FARMER****ADVISORY BOARD, §§2-1-201 to**
2-1-206.**Ancillary committee of outside**
representatives, §2-1-206.**Established, §2-1-201.****Meetings, §2-1-205.****Members, §2-1-203.**

Qualifications, §2-1-202.

Officers, §2-1-205.**Powers and duties, §2-1-204.**

Index to Title 1

A

ACTIONS.

Statutes.

Effect of adoption of code on existing actions, §1-2-111.

Repeal.

Existing actions not affected by repeal, §1-2-120.

AGRICULTURE.

Arkansas agriculture recognition day, §1-5-111.

ANTHEM OF STATE, §1-4-116.

APPLE BLOSSOM.

State flower, §1-4-109.

APPROPRIATIONS.

Code revision commission.

Commission not to incur obligations absent appropriated or available funds, §1-2-304.

ARBOR DAY.

Commemoration on proclamation, §1-5-106.

ARKANSAS AGRICULTURE

RECOGNITION DAY, §1-5-111.

ARKANSAS CODE REVISION

COMMISSION, §§1-2-301 to 1-2-304.

ASIAN PEOPLE.

Definition of minorities in Arkansas, §§1-2-501 to 1-2-504.

B

BAUXITE.

State rock, §1-4-111.

BIRDS.

Purple martin capitals.

Designation, §1-4-121.

State bird.

Designation, §1-4-118.

BLIND PERSONS.

White cane safety day.

Governor's proclamation regarding, §1-5-108.

BOARDS AND COMMISSIONS.

Code revision commission, §§1-2-301 to 1-2-304.

Uniform laws.

Commission on uniform state laws, §§1-2-401 to 1-2-403.

BOUNDARIES.

State of Arkansas.

Extension of western boundary line, §1-1-101.

BUREAU OF LEGISLATIVE RESEARCH.

Code revision commission.

Transfer of commission property, personal records and unexpended allocations to bureau, §1-2-303.

Code revisor.

Employment by bureau, §1-2-302.

Executive director of code revision commission to become, §1-2-303.

Employees of code revision commission.

Transferred to bureau, §1-2-303.

BUTTERFLY OF STATE, §1-4-126.

C

CHICOT COUNTY.

City of Lake Village.

Southeast purple martin capital of the state.

Designation, §1-4-121.

CHRISTMAS DAY.

Official holiday, §1-5-101.

CHRISTMAS EVE.

Official holiday, §1-5-101.

CIRCUIT COURTS.

Statutes.

Construction of statute by circuit court.

Effect, §1-2-206.

CODE REVISION COMMISSION.

Appropriations.

Commission not to incur obligations absent appropriated or available funds, §1-2-304.

CODE REVISION COMMISSION

—Cont'd

Bureau of legislative research.

Transfer of commission property,
personnel, records and
unexpended allocations to,
§1-2-303.

Chairman, §1-2-301.**Code revisor.**

Employment by bureau of legislative
research, advice of commission,
interview of applicants, §1-2-302.

Executive director of code revision
commission to become, §1-2-303.

Compensation, §1-2-301.**Composition, §1-2-301.****Creation, §1-2-301.****Employees transferred to bureau of
legislative research, §1-2-303.****Expenses.**

Reimbursement, §1-2-301.

Fund.

Commission not to incur obligations
absent appropriated or available
funds, §1-2-304.

Members, §1-2-301.**Obligations.**

Commission not to incur obligations
absent appropriated or available
funds, §1-2-304.

**Retention of powers, duties and
functions, §1-2-303.****Terms of members, §1-2-301.****Vacancies, §1-2-301.****CODE REVISOR.**

Employment by bureau of legislative
research, advice of commission,
interview of applicants, §1-2-302.

Executive director of code revision
commission to become, §1-2-303.

COLUMBUS DAY.

Commemoration on proclamation,
§1-5-106.

CONFEDERATE FLAG DAY.

Generally, §1-5-107.

CONTRACTS.**Statutes.**

Effect of adoption of code on existing
contracts, §1-2-111.

COTTER, CITY OF.**Trout capital of the United States.**

Designation, §1-4-123.

CRIMINAL LAW AND PROCEDURE.**Repeal of criminal or penal statute.**

Effect on offenses committed, §1-2-120.

CRIMINAL LAW AND PROCEDURE

—Cont'd

Statutes.

Construction and interpretation.

Applicability of rules to criminal
cases, §1-2-201.

Repeal of criminal or penal statute.

Effect of offenses committed,
§1-2-120.

D**DAISY GATSON BATES DAY,**

§1-5-101.

DANCE.**State folk dance.**

Square dance, §1-4-120.

DEAF PERSONS.**White cane safety day.**

Governor's proclamation regarding,
§1-5-108.

DEATH.**Governor.**

Lowering of state flag, §1-4-103.

DEER.

State mammal, §1-4-122.

DEFINED TERMS.

Hereafter, §1-2-204.

Heretofore, §1-2-204.

Minority, §§1-2-503, 1-2-504.

DIAMONDS.

State gem, §1-4-111.

DIANA FRITILLARY BUTTERFLY.

State butterfly, §1-4-126.

**DISABILITIES, INDIVIDUALS
WITH.**

Statutory language to be respectful,
§1-2-124.

White cane safety day, §1-5-108.

DR. MARTIN LUTHER KING, JR.

Official holiday, §1-5-101.

DUTCH OVEN.

State historic cooking vessel,
§1-4-125.

E**ENGLAND.**

Common and statutory law of
England.

Adoption, §1-2-119.

ENGLISH LANGUAGE.

Official language of state, §1-4-117.

EVIDENCE.**Mail.**

Certified mail.

Return receipt as evidence, §1-2-122.

F**FEES.****Publication.**

Notices, §1-3-107.

FIDDLE.

State musical instrument, §1-4-113.

FIREFIGHTER RECOGNITION DAY,
§1-5-115.

FIREFIGHTERS.

Firefighter recognition day, §1-5-115.

FLAGS.**General assembly.**

Death of members.

Lowering of state flag, §1-4-103.

Governor.

Death of governor.

Executive proclamation, §1-4-103.

Lowering of state flag, §1-4-103.

Salute to state flag, §1-4-102.

Secretary of state.

Purchase of flags for distribution,
§1-4-104.

Provisions in lieu of other flag
distribution laws, §1-4-104.

State flag.

Death of public officials.

Lowering of state flag, §1-4-103.

Description, §1-4-104.

Legislative declaration, §1-4-101.

Lowering of state flag.

Death of public officials, §1-4-103.

Executive proclamation, §1-4-103.

Salute to state flag, §1-4-103.

Supreme court.

Lowering of state flag.

Death of members of supreme court,
§1-4-103.

FLOWERS.

State flower, §1-4-109.

FOLK DANCE.

State folk dance.

Square dance, §1-4-120.

FORMS.

Seals and sealed instruments.

Official seals, §1-4-108.

FORT SMITH, CITY OF.

Northwest Purple Martin capital of
Arkansas.

Designation, §1-4-121.

FRUIT.

State fruit and vegetable.

State of Arkansas vine ripe pink
tomato, §1-4-115.

G

GEM OF STATE, §1-4-111.

GENDER.**Statutes.**

Masculine gender includes feminine,
§1-2-203.

GENERAL ASSEMBLY.

Bills.

Clear and unambiguous language.

Required, §1-2-121.

Flags.

Death of members.

Lowering of state flag, §1-4-103.

**GENERAL DOUGLAS MACARTHUR
DAY.**

Commemoration on proclamation,
§1-5-106.

**GEORGE WASHINGTON'S
BIRTHDAY.**

Official holiday, §1-5-101.

GOOD FRIDAY.

Commemoration on proclamation,
§1-5-106.

GOVERNOR.**Death.**

Lowering of state flag, §1-4-103.

Flags.

Lowering of state flag.

Death of governor, §1-4-103.

Executive proclamation, §1-4-103.

Poet laureate of state.

Appointment, §1-4-114.

GRAIN.

State grain, §1-4-127.

H

HATTIE W. CARAWAY DAY, §1-5-106.

HEMOPHILIA AWARENESS DAY,
§1-5-116.

HISPANIC PEOPLE.

Minorities in Arkansas.

Adding Hispanics to definition,
§1-2-502.

HOLIDAYS AND MEMORIAL DAYS.

Arbor day, §1-5-106.

Arkansas bird day, §1-5-106.

HOLIDAYS AND MEMORIAL DAYS

—Cont'd

Arkansas teachers day, §1-5-106.**Bird day**, §1-5-106.**Christmas day**.

Official holiday, §1-5-101.

Christmas Eve.

Official holiday, §1-5-101.

Columbus day, §1-5-106.**Commercial paper**.

Payable day after holiday, §1-5-105.

Compensation.

State employees.

Entitlement to paid holiday or
equivalent time, §1-5-104.**Confederate Flag day**, §1-5-107.**Daisy Gatson Bates day**, §1-5-101.**Dr. Martin Luther King, Jr.'s
birthday**.

Official holiday, §1-5-101.

Firefighter recognition day, §1-5-115.**General Douglas MacArthur day**,
§1-5-106.**George Washington's birthday**.

Official holiday, §1-5-101.

Good Friday, §1-5-106.**Hemophilia awareness day**, §1-5-116.**Independence day**.

Official holiday, §1-5-101.

Jefferson Davis' birthday, §1-5-106.**Juneteenth independence day**,
§1-5-114.**Labor day**.

Official holiday, §1-5-101.

Lincoln's birthday, §1-5-106.**Memorial day**.

Official holiday, §1-5-101.

Memorial days generally.

Not official holidays, §1-5-106.

Schedule, §1-5-106.

National garden week, §1-5-110.**Native American heritage week**,
§1-5-113.**New Year's day**.

Official day, §1-5-101.

Patriots' day, §1-5-106.**POW/MIA day**, §1-5-112.**Prisoners of War Remembrance Day**,
§1-5-109.**Robert E. Lee's birthday**.

Official holiday, §1-5-101.

Rules and regulations.

Official holidays, §1-5-101.

Saturdays.Holidays on Saturdays to be observed
on preceding Friday, §1-5-101.**Senator Hattie W. Caraway day**,
§1-5-106.**HOLIDAYS AND MEMORIAL DAYS**

—Cont'd

Silas Hunt day, §1-5-106.**State employee's birthday**.

Official holiday, §1-5-101.

State offices.

Closing on holidays, §1-5-102.

Other state office closings by
proclamation unaffected,
§1-5-103.**Sundays**.Official holidays falling on Sunday to
be observed on succeeding
Monday, §1-5-101.**Teachers' day**, §1-5-106.**Thanksgiving day**.

Official holiday, §1-5-101.

Universities and colleges.Employees of institutions of higher
learning.Working on holidays may be
required, §1-5-102.**Veterans day**.

Official holiday, §1-5-101.

HONEYBEE.**State insect**, §1-4-110.**I****IMMUNITY**.**Statutes**.Effect of adoption of code on existing
rights and liabilities, §1-2-111.**IMPROVEMENT DISTRICTS**.**Newspapers**.Commissioners of special improvement
districts.Annual reports to be published,
§1-3-105.**Publication**.Commissioners of special improvement
districts.Annual reports to be published,
§1-3-105.**INDEPENDENCE DAY**.

Official holiday, §1-5-101.

INSECTS.

State insect, §1-4-110.

J**JEFFERSON DAVIS' BIRTHDAY**.Commemoration on proclamation,
§1-5-106.**JUNETEENTH INDEPENDENCE
DAY**, §1-5-114.

L**LABOR DAY.**

Official holiday, §1-5-101.

LANGUAGE OF STATE.

English language declared official language, §1-4-117.

LEGAL NOTICES AND ADVERTISEMENTS.**Newspapers.**

Cost of publication.

Printing of publication cost,
§1-3-109.

Penalties for noncompliance,
§1-3-109.

LEGISLATIVE COUNCIL.**Bureau of legislative research.**

Code revision commission.

Transfer of commission property,
personal, records and
unexpended allocations to
bureau, §1-2-303.

Code revisor.

Employment by bureau, §1-2-302.

Executive director of code revision
commission to become, §1-2-303.

Employees of code revision
commission.

Transferred to bureau, §1-2-303.

LIMITATION OF ACTIONS.**Statutes.**

Adoption of code not to toll limitations,
§1-2-112.

Tolling of statute.

Adoption of code not to toll limitations,
§1-2-112.

LINCOLN'S BIRTHDAY.

Commemoration on proclamation,
§1-5-106.

M**MAIL.****Certified mail.**

Registered mail.

Use of certified mail in place of
registered mail, §1-2-122.

Return receipt as evidence, §1-2-122.

Evidence.

Certified mail.

Return receipt as evidence, §1-2-122.

Registered mail.

Certified mail.

Use of certified mail in place of
registered mail, §1-2-122.

MAMMAL OF STATE, §1-4-122.

MARTIN LUTHER KING, JR.'S BIRTHDAY.

Official holiday, §1-5-101.

MEMORIAL DAY.

Official holiday, §1-5-101.

MINORITIES.

Definition of minorities in Arkansas,
§§1-2-501 to 1-2-504.

MINORITIES IN ARKANSAS ACT,

§§1-2-501 to 1-2-504.

MOCKINGBIRD.

State bird, §1-4-118.

MUSIC.

State musical instrument, §1-4-113.

N**NAMES.****State of Arkansas.**

Nickname, §1-4-106.

Pronunciation of state name, §1-4-105.

NATIONAL GARDEN WEEK.

Designation, §1-5-110.

NATIVE AMERICAN HERITAGE WEEK, §1-5-113.**NATIVE AMERICANS.**

Definition of minorities in Arkansas,
§§1-2-501 to 1-2-504.

Holidays.

Native American heritage week,
§1-5-113.

NEWSPAPERS.**Improvement districts.**

Commissioners of special improvement
districts.

Annual reports to be published,
§1-3-105.

Laws, reports and similar matters.

Cost of publication.

Printing of publication cost,
§1-3-109.

Penalties for noncompliance,
§1-3-109.

Eligibility of newspapers to publish,
§1-3-106.

General provisions, §§1-3-101 to
1-3-109.

Penalty for failure to comply, §1-3-101.

Printing of publication cost,
§1-3-109.

Publication in more than one
newspaper, §1-3-108.

NEWSPAPERS —Cont'd**Legal notices and advertisements.**

Costs of publication.

Printing publication cost, §1-3-109.

Public service commission.

Orders to be published, §1-3-103.

NEW YEAR'S DAY.**Official holiday,** §1-5-101.**NICKNAME OF STATE,** §1-4-106.**NORTHWEST PURPLE MARTIN
CAPITAL.****Designations,** §1-4-121.**P****PACIFIC ISLANDERS.****Definition of minorities in Arkansas,**

§§1-2-501 to 1-2-504.

PATRIOTS' DAY.**Commemoration on proclamation,**

§1-5-106.

POET LAUREATE OF STATE.**Appointment,** §1-4-114.**POW/MIA RECOGNITION DAY,**

§1-5-112.

PRISONERS OF WAR**REMEMBRANCE DAY,** §1-5-109.**POW/MIA recognition day,** §1-5-112.**PUBLICATION.****Fees.**

Notices, §1-3-107.

Improvement districts.

Commissioners of special improvement districts.

Annual reports to be published,

§1-3-105.

Laws, reports and similar matters.

Cost of publication.

Printing of publication cost,

§1-3-109.

Penalties for noncompliance,

§1-3-109.

Penalty for failure to comply.

Printing of publication cost,

§1-3-109.

Newspapers.

Laws, reports and similar matters.

Eligibility of newspapers to publish,

§1-3-106.

General provisions, §§1-3-101 to

1-3-109.

Penalty for failure to comply,

§1-3-101.

Publication in more than one

newspaper, §1-3-108.

PUBLICATION —Cont'd**Penalties.**

Laws, reports and similar matters.

Failure to comply, §1-3-101.

Printing of publication cost,

§1-3-109.

Public service commission.

Orders of public service commission.

Newspaper publication, §1-3-103.

**PUBLIC OFFICERS AND
EMPLOYEES.****Birthdays.**

Official holiday, §1-5-101.

Compensation.

Holidays and memorial days.

Entitlement to paid holiday or

equivalent time, §1-5-104.

Statutes.

Adoption of code not to affect

compensation, §1-2-110.

Expenses.

Statutes.

Adoption of code not to affect

expenses, §1-2-110.

Terms of office.

Statutes.

Adoption of code not to affect terms

of office, §1-2-110.

PUBLIC SERVICE COMMISSION.**Newspapers.**

Orders to be published, §1-3-103.

Publication.

Orders of public service commission.

Newspaper publication, §1-3-103.

PURPLE MARTINS.**Designation of capitals,** §1-4-121.**Q****QUARTZ CRYSTAL.****State mineral,** §1-4-111.**R****RACIAL MINORITIES.****Definition of minorities in Arkansas,**

§§1-2-501 to 1-2-504.

REGISTERED MAIL.**Certified mail.**

Use in place of registered mail,

§1-2-122.

REGNAT POPULUS.**State motto,** §1-4-107.**RICE.****State grain,** §1-4-127.

ROBERT E. LEE'S BIRTHDAY.**Official holiday**, §1-5-101.**ROCK OF THE STATE**, §1-4-111.**S****SEALS AND SEALED INSTRUMENTS.****Auditor of state**, §1-4-108.**Forms.**

Official seals, §1-4-108.

Secretary of state, §1-4-108.

Seal of office, §1-4-108.

State of Arkansas.

Seal of state, §1-4-108.

Treasurer of state, §1-4-108.**SECRETARY OF STATE.****Flags.**Purchase of flags for distribution,
§1-4-104.Provisions in lieu of other flag
distribution laws, §1-4-104.**Seals and sealed instruments.**

Seal of office, §1-4-108.

SENATOR HATTIE W. CARAWAY DAY, §1-5-106.**SERVICE OF PROCESS.****Certified mail**, §1-2-122.**Mail.**

Certified mail.

Alternative, §1-2-122.

Registered mail, §1-2-122.

Registered mail, §1-2-122.**SILAS HUNT DAY**, §1-5-106.**SLAVERY.****Juneteenth independence day**,
§1-5-114.**SONGS OF STATE**, §1-4-116.**SOUTHEAST PURPLE MARTIN CAPITAL.****Designation**, §1-4-121.**SQUARE DANCE.****State folk dance**, §1-4-120.**STATE BEVERAGE.****Milk**, §1-4-112.**STATE BIRD.****Designation**, §1-4-118.**STATE BUTTERFLY**, §1-4-126.**STATE COOKING VESSEL.****Dutch oven**, §1-4-125.**STATE FLOWER.****Apple blossom**, §1-4-109.**STATE GEM.****Diamond**, §1-4-111.**STATE GRAIN**, §1-4-127.**STATE MAMMAL**, §1-4-122.**STATE MINERAL.****Quartz crystal**, §1-4-111.**STATE MOTTO.****Regnat populus**, §1-4-107.**STATE NAME.****Nickname**, §1-4-106.**Pronunciation**, §1-4-105.**STATE OF ARKANSAS.****Anthem of state**, §1-4-116.**Beverage of state.****Milk**, §1-4-112.**Boundaries.**Extension of western boundary line,
§1-1-101.

Western boundary line.

Extension, §1-1-101.

Butterfly of state, §1-4-126.**Dance of state.****Square dance**, §1-4-120.**English language.**

Declared official language, §1-4-117.

Flower of state, §1-4-109.**Fruit of state.**Sale of Arkansas vine ripe pink
tomato, §1-4-115.**Gem of state**, §1-4-111.**Grain, state**, §1-4-127.**Historic cooking vessel of state**,
§1-4-125.**Holidays and memorial days.**General provisions, §§1-5-101 to
1-5-113.**Insect of state**, §1-4-110.**Language of state.**English language declared official
language, §1-4-117.**Mineral of state**, §1-4-111.**Motto of state**, §1-4-107.**Musical instrument of state**, §1-4-113.**Names.****Nickname**, §1-4-106.**Pronunciation**, §1-4-105.**Nickname**, §1-4-106.**Poet laureate.****Appointment**, §1-4-114.**Pronunciation of state name**,
§1-4-105.**Rock of state**, §1-4-111.**Seal of state**, §1-4-108.**Soil of state**, §1-4-124.**Songs of state**, §1-4-116.

STATE OF ARKANSAS —Cont'd**Vegetable of state.**

Sale of Arkansas vine ripe pink tomato, §1-4-115.

STATE POET, §1-4-114.**STATE ROCK.**

Bauxite, §1-4-111.

STATE SOIL, §1-4-124.**STATE TREE.**

Designated, §1-4-119.

STATUTE OF LIMITATIONS.**Statutes.**

Adoption of code not to toll limitations, §1-2-112.

Tolling of statute.

Adoption of code not to toll limitations, §1-2-112.

STATUTES.**Actions.**

Effect of adoption of code on existing actions, §1-2-111.

Repeal.

Existing actions not affected by repeal, §1-2-120.

Adoption of code, §1-2-102.**Certain acts.**

Effect, §1-2-105.

Constitutionally invalid acts.

Effect, §1-2-106.

Existing rights, liabilities, contracts, actions, etc.

Effect of adoption of code generally, §1-2-111.

Limitation of actions.

Adoption of code not to toll limitations, §1-2-112.

Public officers and employees.

Terms of office, compensation, expenses, etc., not affected, §1-2-110.

Rules and regulations.

Effect of adoption generally, §1-2-108.

Invalid, unauthorized or defective rules and regulations.

Adoption of code not to validate, §1-2-109.

Time limitations.

Adoption of code not to toll limitations, §1-2-112.

Amendments to code, §1-2-116.**Circuit courts.**

Construction of statute by circuit court.

Effect, §1-2-206.

STATUTES —Cont'd**Citation of code, §1-2-113.****Clear and unambiguous language.**

Required, §1-2-121.

Code revisor.

Employment by bureau of legislative research, §1-2-302.

Executive director of code revision commission to become, §1-2-303.

Constitutionally invalid acts.

Adoption of code not to validate, §1-2-106.

Construction and interpretation.**Adoption of code.****Certain acts.**

Effect, §1-2-105.

Constitutionally invalid acts.

Effect, §1-2-106.

Existing rights, liabilities, contracts, actions, etc.

Effect generally, §1-2-111.

Limitation of actions.

Adoption of code not to toll limitations, §1-2-112.

Public officers and employees.

Terms of office, compensation, expenses, etc., not affected, §1-2-110.

Rules and regulations.

Effect of adoption generally, §1-2-108.

Invalid, unauthorized or defective rules and regulations.

Adoption of code not to validate, §1-2-109.

Time limitations.

Adoption not to toll limitations, §1-2-112.

Applicability of rules of construction.

Civil and criminal cases, §1-2-201.

Circuit courts.

Effect of construction of statute by circuit court, §1-2-206.

Classification of code not to be construed, §1-2-115.**Designation of code, §1-2-113.****Existing rights, liabilities, contracts, actions, etc.**

Effect of adoption of code generally, §1-2-111.

Gender.

Masculine includes feminine, §1-2-203.

"Hereafter," §1-2-204.

"Heretofore," §1-2-204.

Identical acts, §1-2-207.

Liberal construction, §1-2-202.

STATUTES —Cont'd**Construction and interpretation****—Cont'd**

Limitation of actions.

Adoption of code not to toll limitations, §1-2-112.

Notes, headings, etc., §1-2-115.

Omission of validating and curative acts from code, §1-2-104.

Organization of code not to be construed, §1-2-115.

Plural words, §1-2-203.

Public officers and employees.

Adoption of code not to affect terms of office, compensation, expenses, etc., §1-2-110.

References to code titles, subtitles, chapters, etc., §1-2-114.

Repeals, §1-2-103.

Exceptions, §1-2-103.

Repealed acts not revived by code, §1-2-107.

Rules and regulations.

Effect of adoption of code generally, §1-2-108.

Invalid, unauthorized or defective rules and regulations.

Adoption of code not to validate, §1-2-109.

Severability of provisions, §1-2-205.

Code provisions, §1-2-117.

Singular words, §1-2-203.

Subject matter similarities, §1-2-207.

Time limitations.

Adoption of code not to toll limitations, §1-2-112.

Contracts.

Effect of adoption of code on existing contracts, §1-2-111.

Criminal law and procedure.

Construction and interpretation.

Applicability of rules to criminal cases, §1-2-201.

Repeal of criminal or penal statute.

Effect of offenses committed, §1-2-120.

Curative acts.

Omission from code.

Construction and interpretation, §1-2-104.

Date.

Effective date of code, §1-2-118.

Designation of code, §1-2-113.**Disabilities, persons with.**

Respectful language in referencing, §1-2-124.

Effective date of code, §1-2-118.**STATUTES —Cont'd****Electronic version of code.**

Printed code precedence over electronic version, §1-2-123.

Enactment of code, §1-2-102.

Certain acts.

Effect, §1-2-105.

Constitutionally invalid acts.

Effect, §1-2-106.

Existing rights, liabilities, contracts, actions, etc.

Effect of adoption of code generally, §1-2-111.

Limitation of actions.

Adoption of code not to toll limitations, §1-2-112.

Public officers and employees.

Terms of office, compensation, expenses, etc., not affected, §1-2-110.

Rules and regulations.

Effect of enactment generally, §1-2-108.

Invalid, unauthorized or defective rules and regulations.

Adoption of code not to validate, §1-2-109.

Time limitations.

Adoption of code not to toll limitations, §1-2-112.

English statute law.

Adoption, §1-2-119.

Gender.

Masculine gender includes feminine, §1-2-203.

Identical acts.

Last repeals earlier, §1-2-207.

Intent.

Legislative intent of code, §1-2-101.

Legislative intent of code, §1-2-101.**Liability.**

Effect of adoption of code on existing rights and liabilities, §1-2-111.

Limitation of actions.

Adoption of code not to toll limitations, §1-2-112.

Number.

Plural words include singular, §1-2-203.

Singular words, §1-2-203.

Plural words.

Plural includes singular, §1-2-203.

Printed version of code.

Precedence over electronic version, §1-2-123.

Public officers and employees.

Adoption of code not to affect terms of office, compensation, expenses, etc., §1-2-110.

STATUTES —Cont'd**References.**

Titles, subtitles, chapters, etc., of code,
§1-2-114.

Repeal.**Effect.****Actions.**

Existing actions not affected by
repeal, §1-2-120.

Criminal or penal statute.

Effect of repeal on offenses
committed, §1-2-120.

Existing actions not affected by
repeal, §1-2-120.

Repealing statute, §1-2-120.

Prior laws, §1-2-103.

Exceptions, §1-2-103.

Repealed acts not revived by code,
§1-2-107.

Repealing statute.

Effect of repeal, §1-2-120.

Rules and regulations.

Effect of adoption of code generally,
§1-2-108.

Invalid, unauthorized or defective
rules and regulations.

Adoption of code not to validate,
§1-2-109.

Severability of provisions, §1-2-205.

Code provisions, §1-2-117.

Subject matter similarities.

Act interpretation, §1-2-207.

Time.**Limitations of time.**

Adoption of code not to toll
limitations, §1-2-112.

Validating acts.

Omission from code.

Construction and interpretation,
§1-2-104.

SUNDAY.**Holidays.**

Succeeding Monday to be legal holiday
when holiday falls on Sunday,
§1-5-105.

SUPREME COURT.**Flags.**

Lowering of state flag.

Death of members of supreme court,
§1-4-103.

T**TEACHERS.****Holidays.**

Arkansas teachers day, §1-5-106.

THANKSGIVING DAY.

Official holiday, §1-5-101.

TIME.**Statutes.**

Limitations of time.

Adoption of code not to toll
limitations, §1-2-112.

TREASURER OF STATE.

Seal of office, §1-4-108.

TREES AND TIMBER.**State tree.**

Designation, §1-4-119.

TROUT CAPITAL OF THE U.S.A.

Designation, §1-4-123.

U**UNIFORM LAWS.****Commission on uniform state laws.**

Appointment of members, §1-2-401.

Filling vacancies, §1-2-401.

Composition, §1-2-401.

Creation, §1-2-401.

Duties, §1-2-403.

Meetings, §1-2-402.

National conference of commissioners
on uniform state laws.

Attendance by commissioners,
§1-2-403.

Number of members, §1-2-401.

Officers, §1-2-402.

Terms of members, §1-2-401.

Vacancies.

Appointments to fill, §1-2-401.

UNIVERSITIES AND COLLEGES.**Holidays.**

Employees of institutions of higher
learning.

Working on holidays may be
required, §1-5-102.

V**VEGETABLES.****State fruit and vegetable.**

Sale of Arkansas vine ripe pink
tomato, §1-4-115.

VETERANS DAY.

Official holiday, §1-5-101.

W**WASHINGTON'S BIRTHDAY.**

Official holiday, §1-5-101.

WHITE CANE SAFETY DAY.
Governor's proclamation regarding,
§1-5-108.

Index to Title 2

A

ABANDONMENT.

Bees and honey.

Abandoned apiary.

Defined, §2-22-101.

ACCOUNTS AND ACCOUNTING.

Beef council fund.

National beef promotion account.

Creation of account in fund,
§2-35-406.

State beef promotion account.

Creation of account, §2-35-407.

Beef promotion and research.

National beef promotion account.

Creation, §2-35-406.

State beef promotion account.

Creation, §2-35-407.

Cattle.

National beef promotion account.

Creation, §2-35-406.

State beef promotion account.

Creation, §2-35-407.

Livestock shows.

Reports.

Accounting reports by recipients of
funds, §2-36-211.

ACTIONS.

Agricultural cooperative associations.

Power to sue and be sued, §2-2-106.

Agriculture.

Foreign investment.

Private right of enforcement,
§2-3-106.

Nuisances.

Agricultural facilities.

Actions for injuries or damages
not affected, §2-4-106.

Livestock.

Running at large.

Refusal to deliver to owner.

Right of action, §2-38-116.

Livestock and poultry commission.

Cremation of dead animals.

Civil actions for violations of
requirement, §2-40-303.

Livestock or poultry production contracts.

Violations, §2-32-201.

ACTIONS —Cont'd

Nuisances.

Agricultural facilities.

Actions for injuries or damages not
affected, §2-4-106.

Rice certification act.

Civil action, relief authorized,
§2-15-206.

Seeds.

Arbitration of defective seed claims.

Evidence.

Investigation and report for
arbitration committee.

Findings, §2-23-107.

Prerequisite to legal action,
§2-23-102.

Notice not typed on container or
label.

Compliance with section not
required, §2-23-102.

ADMINISTRATIVE PROCEDURE.

Grain.

Receiver for grains stored in public
warehouses.

Applicability of administrative
procedure act to actions of
commissioner, §2-17-408.

ADULTERATION.

Commercial feeds, §2-37-107.

Prohibited acts, §2-37-108.

Pesticides.

Definition of adulteration, §2-16-403.

Unlawful acts, §2-16-411.

Soil amendment.

Definition of adulteration, §2-19-402.

ADVERTISING.

Livestock.

Running at large.

Advertisements of taker-up to be
posted, §2-38-111.

Payment of expenses, §2-38-113.

Penalty for failure to advertise,
§2-38-111.

Publication in addition to posting,
§2-38-112.

Rice research and promotion act.

Research, market development and
advertising program, §2-20-510.

Seeds.

False advertising, §2-18-102.

ADVERTISING —Cont'd**Seeds —Cont'd**

Fees for promotion and advertising,
§2-18-105.

Wheat promotion act.

Research, extension, market
development and advertising
program.

Generally, §2-20-609.

AFLATOXIN.**Arkansas-grown seed and grain.**

Monitoring by plant board, §2-18-109.

Rulemaking regarding aflatoxin,
§2-18-111.

Sampling methods for testing,
§2-18-110.

AGENTS.**Agriculture.**

Emergency plant act.

Act of agent or employee deemed act
of principal, §2-16-305.

Grading of products and containers.

Act of agent or employee deemed act
of principal, §2-20-117.

Plant board.

Act of employee or agent deemed act
of principal, §2-16-204.

Pest control.

Act of employee or agent deemed act of
principal, §2-16-204.

Wheat promotion board.

Resident agent for service of process,
§2-20-610.

AGRICULTURAL COOPERATIVE ASSOCIATIONS.**Actions.**

Power to sue and be sued, §2-2-106.

Activities authorized, §§2-2-105,
2-2-106.

Admission of members, §2-2-107.

Advanced biofuels facilities.

Defined, §2-8-102.

Tax credit, §§2-8-106, 2-8-109.

Eligibility, §2-8-106.

Agricultural products.

Defined, §2-2-102.

**Amendments to articles of
association,** §2-2-109.

Filing fees, §2-2-124.

Applicability of provisions, §2-2-301.

Articles of association.

Amendments, §2-2-109.

Filing fees, §2-2-124.

Contents, §2-2-108.

Fees.

Filing fees, §2-2-124.

AGRICULTURAL COOPERATIVE ASSOCIATIONS —Cont'd**Articles of association —Cont'd**

Subscription, §2-2-108.

Assets.

Merger or consolidation.

Rights of members and others in
mergers, consolidations, sale or
lease of assets, §2-2-313.

Mortgage, §2-2-310.

Rights of members and others,
§2-2-313.

Sale in regular course of business,
§2-2-311.

Sale or lease other than in regular
course of business, §2-2-312.

Bylaws.

Adoption, §2-2-110.

Amendments, §2-2-110.

Majority vote sufficient for adoption,
§2-2-110.

Contents, §2-2-110.

Damages.

Fixed and liquidated damages,
§2-2-117.

Quorum for stockholders' meetings,
§2-2-110.

Certificates of membership.

Fees, §2-2-114.

Construction of act, §2-2-103.

Contracts.

Breach of contract.

Bylaws may fix liquidated damages,
§2-2-117.

Penalty for inducing, §2-2-118.

Remedy, §2-2-117.

Marketing contracts, §2-2-116.

Participation contracts, §2-2-116.

Power to contract, §2-2-106.

Restraint of trade, §2-2-122.

Cooperative marketing associations.

General provisions, §§2-2-401 to
2-2-430.

Corporations.

Application of general corporation
laws, §2-2-119.

Interest in other corporations or
associations, §2-2-120.

Damages.

Liquidated damages.

Remedies for breach of contract,
§2-2-117.

Debts.

Liability of members for debts of
association, §2-2-114.

Definitions, §2-2-102.**Directors.**

Appointment, §2-2-112.

AGRICULTURAL COOPERATIVE ASSOCIATIONS —Cont'd

Directors —Cont'd

- Compensation, §2-2-112.
- Election, §2-2-112.
- Executive committee, §2-2-112.
- Number of directors, §2-2-112.

Election.

- Directors, §2-2-112.

Existing associations.

- Adoption of provisions of act, §2-2-121.

Fees.

- Annual license fee.
- Payment to secretary of state, §2-2-123.
- Filing fees, §2-2-124.
- Existing entities, §2-2-121.

General corporation laws.

- Application, §2-2-119.

Investments.

- Reserves.
- Power to establish and invest, §2-2-106.

Legislative declaration.

- Purposes of provisions, §2-2-101.

Marketing associations, §§2-2-401 to 2-2-430.

Matters referred to membership, §2-2-115.

Meetings.

- Notice.
- Regular and special meetings, §2-2-111.
- Regular meetings.
- Notice, §2-2-111.
- Special meetings.
- Notice, §2-2-111.

Members.

- Defined, §2-2-102.
- Matters referred to entire membership, §2-2-115.
- Persons who may be members, §2-2-107.
- Transferability of stock certificates, §2-2-107.

Merger and consolidation.

- Applicability of provisions, §2-2-301.
- Approval by members, §2-2-305.
- Approval of time of merger, §2-2-303.
- Articles of consolidation, §2-2-306.
- Articles of merger, §2-2-306.
- Assets.
- Mortgage and sale, §2-2-310.
- Rights of members and others in mergers, consolidations, sale or lease of assets, §2-2-313.
- Sale and merger, §2-2-310.

AGRICULTURAL COOPERATIVE ASSOCIATIONS —Cont'd

Merger and consolidation —Cont'd

Assets —Cont'd

- Sale in regular course of business, §2-2-311.

- Sale or lease other than in regular course of business, §2-2-312.

Authorized, §2-2-303.

- Continuance of association existence in aid of title transfers, §2-2-309.

- Domestic and foreign associations, §2-2-308.

- Effect of consolidation, §2-2-307.

- Effect of merger, §2-2-307.

- Elections, §2-2-305.

- Notice to member, §2-2-305.

Plans.

- Approval by board of directors, §§2-2-303, 2-2-304.

- Procedure, §§2-2-303, 2-2-304.

- Provisions supplemental, §2-2-302.

- Rights of members and others in mergers, consolidations, sale or lease of assets, §2-2-311.

- Terms and conditions, §2-2-303.

Title.

- Continuance of association existence in aid of title transfers, §2-2-309.

Monopolies.

- Associations and contracts not in restraint of trade, §2-2-122.

Mortgages and deeds of trust.

- Merger or consolidation.

- Mortgage and sale of assets, §2-2-310.

Notice.

- Meetings, §2-2-111.

Officers, §2-2-113.

- Election, §2-2-113.

Organization.

- Number of organizers, §2-2-104.

- Reasons for organizing, §2-2-105.

- Who may organize, §2-2-104.

Other associations.

- Interest in other associations, §2-2-120.

Penalties.

- Inducing breach of contract, §2-2-118.

Person.

- Defined, §2-2-102.

Powers.

- Generally, §2-2-106.

Property.

- Powers as to property, §2-2-106.

Provisions supplemental, §2-2-302.

Purposes of provisions, §2-2-101.

AGRICULTURAL COOPERATIVE ASSOCIATIONS —Cont'd

Quorum.

Bylaws.

Stockholders' meetings amending bylaws, §2-2-110.

Real property.

Powers as to real property, §2-2-106.

Restraint of trade.

Associations and contracts not in restraint of trade, §2-2-122.

Rights of members and others, §2-2-313.

Saving provisions, §2-2-103.

Stock and stockholders.

Bylaws.

Quorum for stockholders' meetings amending, §2-2-110.

Certificates of stock.

Transferability, §2-2-107.

Common stock.

Amount owned, §2-2-114.

Matters referred to entire membership, §2-2-115.

Preferred stock.

Issuance, §2-2-114.

Redemption, §2-2-114.

Voting, §2-2-114.

Taxation.

Compensation tax act.

Associations subject to, §2-2-123.

AGRICULTURE.

Actions.

Foreign investment.

Private right of enforcement, §2-3-107.

Nuisances.

Agricultural facilities.

Actions for injuries or damages not affected, §2-4-106.

Agents.

Emergency plant act.

Act of agent or employee deemed act of principal, §2-16-305.

Grading of products and containers.

Act of agent or employee deemed act of principal, §2-20-117.

Plant board.

Act of employee or agent deemed act of principal, §2-16-204.

Appeals.

Grading of products and containers.

Appeals from inspector's decision to chief inspector, §2-20-114.

Attorney general.

Emergency plant act.

Duties of attorney general, §2-16-304.

AGRICULTURE —Cont'd

Bees and honey, §§2-22-101 to 2-22-112.

Biotechnology development and training, §§2-8-101 to 2-8-109.

Boll weevil suppression and eradication.

General provisions, §§2-16-601 to 2-16-617.

Bonds, surety.

Grading of products and containers.

Inspectors and employees, §2-20-110.

Plant board.

Director, §2-16-208.

Bribery.

Grading of products and containers.

Influencing inspector, §2-20-111.

Catfish processor fair practices, §§2-6-101 to 2-6-107.

Catfish promotion board, §§2-9-101 to 2-9-112.

Cedar trees.

Compensation for trees destroyed, §2-16-101.

Presentation of claims to county court, §2-16-101.

Claims committee.

Emergency plant act, §2-16-309.

Commercial fertilizers, §§2-19-201 to 2-19-212.

Confidentiality of information.

Farm mediation.

Disclosure of information, §2-7-202.

Cooperatives.

Agricultural cooperative associations, §§2-2-101 to 2-2-313.

Cooperative marketing associations, §§2-2-401 to 2-2-430.

Corn and grain sorghum promotion, §§2-20-801 to 2-20-806.

Damages.

Grading of products and containers.

Inspectors and employees.

Persons injured by may sue on bond, §2-20-110.

Definitions.

Emergency plant act, §2-16-302.

Farm mediation, §2-7-102.

Foreign investment, §2-3-102.

Grading of products and containers, §2-20-102.

Labeling of fruits and vegetables for interstate shipment, §2-20-302.

Plant act, §2-16-202.

Emergency plant act.

Act supplemental, §2-16-303.

Agents.

Act of agent or employee deemed act of principal, §2-16-305.

AGRICULTURE —Cont'd**Emergency plant act —Cont'd**

Attorney general.

Duties, §2-16-304.

Claims committee.

Adjustment of claims, §2-16-309.

Chairperson, §2-16-309.

Duties, §2-16-309.

Expenses, §2-16-309.

Membership, §2-16-309.

Quorum, §2-16-309.

Construction of act, §2-16-303.

Definitions, §2-16-302.

Director.

Employees, §2-16-306.

Enforcement of provisions,
§2-16-306.

Governor.

Proclamation of quarantine,
§2-16-307.

Penalties.

Violations of act, §2-16-304.

Prosecuting attorneys.

Duties, §2-16-304.

Quarantine.

Governor's proclamation, §2-16-307.

Rules and regulations, §2-16-308.

Reports.

Annual report of board, §2-16-310.

Rights of inspection, §2-16-306.

Short title, §2-16-301.

Subpoenas.

Power to require production of
documents, §2-16-306.Treatment or destruction of plants or
products, §2-16-308.

Violations.

Penalty for violation of act,
§2-16-304.

Witnesses.

Power of board to summon,
§2-16-306.**Evidence.**

Grading of products and containers.

Certificates prima facie evidence of
grade, §2-20-115.**Farm mediation.**

Administration of program, §2-7-201.

Agreements.

Execution, §2-7-309.

Applicability of chapter.

Exemptions, §2-7-306.

Attorneys at law.

Right to attorney, §2-7-308.

Citation of chapter, §2-7-101.

Confidentiality of information,
§2-7-202.

Definitions, §2-7-102.

AGRICULTURE —Cont'd**Farm mediation —Cont'd**

Disclosure of information, §2-7-202.

Exemptions from chapter, §2-7-306.

Forms, §2-7-203.

Mandatory mediation, §2-7-303.

Voluntary mediation.

Application and request forms,
§2-7-301.

Information on services, §2-7-305.

Mandatory mediation.

Notice, §2-7-303.

Mediators.

Assignment, §2-7-305.

Duties, §2-7-308.

Meetings.

Initial meeting, §2-7-307.

Subsequent meetings, §2-7-307.

Mortgages and deeds of trust.

Foreclosure.

Release prerequisite to, §2-7-302.

Office.

Administration of program,
§2-7-201.

Creation, §2-7-201.

Release.

Effective period, §2-7-310.

Issuance, §2-7-310.

Prerequisite to foreclosure,
termination, etc., §2-7-302.

Requests for mediation.

Form and contents, §2-7-304.

Service, §2-7-304.

Short title of chapter, §2-7-101.

Voluntary mediation, §2-7-301.

Farm products.Agricultural cooperative associations,
§§2-2-101 to 2-2-313.Cooperative marketing associations
generally, §§2-2-401 to 2-2-430.**Fertilizers.**General provisions, §§2-19-201 to
2-19-212.Natural organic fertilizers, §§2-19-501
to 2-19-503.**Fire ant poison cost sharing
program.**

Creation, §2-16-105.

Quarantine costs.

Recovery, §2-16-106.

Rules and regulations, §2-16-107.

Fish farming.Domestic fish farming, §§2-5-101 to
2-5-103.**Foreign investments.**Acquisition by enforcement of lien,
§2-3-105.

AGRICULTURE —Cont'd**Foreign investments —Cont'd**

Actions.

Failure to register.

Attorney general to institute
action, §2-3-106.Private right of enforcement,
§2-3-107.

Agricultural land.

Acquiring or holding land in
violation of act.Declaratory judgment of court,
§2-3-106.

Defined, §2-3-102.

Foreign acquirers to register with
clerk, §2-3-103.

Aliens.

Full ownership rights in nonfarm
lands, §2-3-109.

Applicability of act, §2-3-108.

Citation of act, §2-3-101.

Declaratory judgments.

Acquiring or holding land in
violation of act, §2-3-106.

Definitions, §2-3-102.

Enforcement.

Private right of enforcement,
§2-3-107.

Exceptions, §2-3-108.

Land used for nonfarming purposes
and mineral leases, §2-3-110.

Foreign governments.

Defined, §2-3-102.

Liens.

Acquisition by enforcement of lien,
§2-3-105.

Loans.

Foreign investor's right to loan to
Arkansas farmers, §2-3-104.

Mineral leases.

Exception for land used for mineral
leases, §2-3-110.

Nonfarm lands.

Aliens to have full ownership rights,
§2-3-109.

Party.

Defined, §2-3-102.

Foreign party.

Defined, §2-3-102.

Penalties.

Failure to register, §2-3-106.

Registration.

Failure to register.

Penalty, §2-3-106.

Foreign acquirers of agricultural
land to register with clerk,
§2-3-103.

Short title of act, §2-3-101.

AGRICULTURE —Cont'd**Foreign investments —Cont'd**

Title.

Short title of act, §2-3-101.

Forms.

Farm mediation, §2-7-203.

Mandatory mediation, §2-7-303.

Voluntary mediation.

Application and request forms,
§2-7-301.**Ginseng.**General provisions, §§2-20-701 to
2-20-705.**Governor.**

Emergency plant act.

Proclamation of quarantine,
§2-16-307.**Grading of products and containers.**

Agents.

Act of agent deemed act of principal,
§2-20-117.

Agricultural products.

Defined, §2-20-102.

Appeals.

Inspector's decision.

Appeals to chief inspector,
§2-20-114.

Bonds, surety.

Inspectors and employees, §2-20-110.

Bribery.

Influencing inspectors, §2-20-111.

Certificates.

Prima facie evidence of grade,
§2-20-115.

Citation, §2-20-101.

Definitions, §2-20-102.

Director.

Appeals.

Inspector's decision, §2-20-114.

Compensation, §2-20-109.

Designation of inspectors or
employees, §2-20-109.

Licenses, §2-20-109.

Evidence.

Certificate prima facie evidence of
grade, §2-20-115.

Fees.

Assessment or collection, §2-20-109.

Disposition of fees collected,
§2-20-112.

Inspections.

Authorized, §2-20-113.

Improper inspection, §2-20-111.

Improperly influencing inspector,
§2-20-111.

Right of entry, §2-20-113.

Inspectors and employees.

Acts of agents or employees deemed
act of principal, §2-20-117.

AGRICULTURE —Cont'd**Grading of products and containers —Cont'd**

Inspectors and employees —Cont'd

Appointment, §2-20-110.

Bonds, surety, §2-20-110.

Damages, §2-20-110.

Improperly influencing inspectors,
§2-20-111.

Licenses, §2-20-109.

Licenses.

Suspension or revocation, §2-20-109.

Manufacture or sale of containers.

Noncompliance with standards,
§2-20-107.

Misdemeanors.

Penalty for violations, §2-20-103.

Misrepresentation, §2-20-116.

Notice.

Adoption or modification of
standards, §2-20-105.

Persons.

Defined, §2-20-102.

Places.

Defined, §2-20-102.

Plant board.

Cooperation with United States,
§2-20-106.

Fees.

Assessment or collection,
§2-20-109.

Rules and regulations, §2-20-112.

Standards and classifications.

Promulgation by plant board,
§2-20-104.

Rules and regulations.

Promulgation by board, §2-20-112.

Sales.

Containers not complying with
standard, §2-20-107.

Ungraded products.

Sale by grade or classification,
§2-20-108.

Short title, §2-20-101.

Standards and classifications.

Adoption or modification, §2-20-106.

Notice, §2-20-105.

Manufacture or sale of containers
not complying, §2-20-107.Promulgated by plant board,
§2-20-104.

Tolerances, §2-20-104.

Variations, §2-20-104.

Title.

Short title, §2-20-101.

Ungraded products.

Sale by grade or classification
unlawful, §2-20-108.**AGRICULTURE —Cont'd****Grading of products and containers —Cont'd**

United States.

Cooperation with United States,
§2-20-106.

Federal standards, §2-20-106.

Violations.

Penalty, §2-20-103.

Income tax.Biotechnology development and
training.

Tax credits, §§2-8-103 to 2-8-108.

Inspections.

Emergency plant act.

Fruits and vegetables for interstate
shipment, §2-20-310.

Rights of inspection, §2-16-306.

Fees.

Board may require payment,
§2-16-209.Sale, shipment or disposal of plants or
products.Certificate of inspection required,
§2-16-210.**Irrigation companies.**Discharge of center pivot irrigation
water onto highways, §2-1-101.**Johnson grass control and
eradication, §§2-16-501 to
2-16-511.****Labels.**Fruits and vegetables for interstate
shipment.

Administration of act.

Duties of plant board, §2-20-306.

Apples.

Products to which act applies,
§2-20-303.

Applicability of act.

Act limited to Arkansas products,
§2-20-303.Products to which act applies,
§2-20-303.

Arkansas products.

Limitation of act, §2-20-303.

Closed containers.

Marking, §2-20-307.

Definitions, §2-20-302.

Enforcement of act.

Duty of plant board, §2-20-306.

Exceptions.

Transactions excepted from act,
§2-20-304.

False representations.

Prohibited, §2-20-308.

Grades.

United States grades, §2-20-303.

AGRICULTURE —Cont'd**Labels —Cont'd**

- Fruits and vegetables for interstate shipment —Cont'd
- Inspections.
- Powers of plant board, §2-20-310.
- Irish potatoes.
- Products to which act applies, §2-20-303.
- Marking of closed containers, §2-20-307.
- Misdemeanors.
- Penalty for violations, §2-20-305.
- Misrepresentation, §2-20-308.
- Peaches.
- Products to which act applies, §2-20-303.
- Plant board.
- Administration by plant board, §2-20-306.
- Enforcement of act, §2-20-306.
- Inspections, §2-20-310.
- Products to which act applies, §2-20-303.
- Purpose of act, §2-20-301.
- Right of entry, §2-20-310.
- Sanitary requirements.
- Used containers, §2-20-309.
- Strawberries.
- Products to which act applies, §2-20-303.
- Title of act, §2-20-301.
- Tomatoes.
- Products to which act applies, §2-20-303.
- Transactions excepted from act, §2-20-304.
- Used containers.
- Removal of prior markings, §2-20-309.
- Sanitary requirements, §2-20-309.

Leases.

- Agricultural foreign investment.
- Exception for land used for mineral leases, §2-3-110.

Licenses.

- Grading of products and containers.
- Licensing of inspectors, §2-20-109.

Liens.

- Eradication of pests or diseases.
- Failure to comply with notice, §2-16-211.
- Foreign investment.
- Acquisition by enforcement of lien, §2-3-105.

AGRICULTURE —Cont'd**Liming materials, §§2-19-301 to 2-19-308.****Loans.**

- Foreign investors.
- Right to loan to Arkansas farmers, §2-3-104.

Marketing associations.

- Agricultural cooperative associations, §§2-2-101 to 2-2-313.
- Cooperative marketing associations, §§2-2-401 to 2-2-430.

Mediation.

- Farm mediation, §§2-7-101 to 2-7-310.

Mines and minerals.

- Foreign investment.
- Exception for land used for mineral leases, §2-3-110.

Misrepresentation.

- Grading of products and containers.
- Misrepresentation as to grade or classification, §2-20-116.
- Labeling of fruits and vegetables for interstate shipment, §2-20-308.

Natural organic fertilizers,

- §§2-19-501 to 2-19-503.

Notice.

- Grading of products and containers.
- Standards and classifications.
- Notice of adoption or modifications, §2-20-105.

Nuisances, agricultural operations.

- Action for injuries or damages not affected, §2-4-106.
- Applicability of provisions to contracts, §2-4-103.
- Declaration of policy, §2-4-101.
- Definitions, §2-4-102.
- Employment of practices commonly or reasonably associated with production, §2-4-107.
- Establishment prior to commencement of use of surrounding area, §2-4-107.
- Expert fees, court costs, attorney's fees.
- Awarding to prevailing party, §2-4-107.
- Facilities or appurtenances not to become nuisance, §2-4-107.
- Legislative determinations, §2-4-101.
- Liberal construction of chapter, §2-4-108.
- Present or future nuisance ordinances void, §2-4-105.

AGRICULTURE —Cont'd

Nursery fraud act, §§2-21-101 to 2-21-113.

Orchards.

Claims.

Presentation of claims to county court for destroyed trees, §2-16-101.

State board of orchard inspection.

Compensation for trees destroyed by board, §2-16-101.

Ordinances.

Nuisances.

Agricultural operations.

Present or future nuisance ordinances void, §2-4-105.

Pear trees.

Compensation for destroyed trees, §2-16-101.

Presentation of claims to county court, §2-16-101.

Penalties.

Control of insect pesticides and plant diseases, §2-16-203.

Emergency plant act.

Violations of act, §2-16-304.

Foreign investment.

Failure to register, §2-3-106.

Grading of products and containers.

Penalty for violation, §2-20-103.

Labeling of fruits and vegetables for interstate shipment.

Violations of act, §2-20-305.

Pesticides.

Pesticide control, §§2-16-401 to 2-16-419.

Plant act.

Conflicts with federal law, §2-16-205.

Definitions, §2-16-202.

Short title, §2-16-201.

Title of act, §2-16-201.

Plant board.

Acts of employee or agent deemed act of principal, §2-16-204.

Alligator weed.

Agreements to hold United States free from claims, §2-16-103.

Boll weevil suppression and eradication.

General provisions, §§2-16-601 to 2-16-617.

Composition, §2-16-206.

Created, §2-16-206.

Director, §2-16-208.

Appointment, §2-16-208.

Bond, surety, §2-16-208.

Duties of board, §2-16-207.

AGRICULTURE —Cont'd**Plant board —Cont'd**

Enforcement of act.

Powers of board and inspectors, §2-16-207.

Established, §2-16-206.

Expenses, §2-16-206.

Facilities, §2-16-206.

Fire ant poison cost sharing program.

Administration, §2-16-105.

Quarantine costs.

Recovery, §2-16-106.

Rules and regulations.

Promulgation, §2-16-107.

Funds of board.

Deposit in plant board fund, §2-16-104.

Deposit with state treasurer, §2-16-104.

Operations and facilities construction fund, §2-16-108.

Ginseng.

General provisions, §§2-20-701 to 2-20-705.

Inspections.

Emergency plant act.

Rights of inspection, §2-16-306.

Johnson grass.

Cooperation of director, §2-16-507.

Meetings, §2-16-206.

Members, §2-16-206.

Monitoring of Aflatoxin, §2-18-109.

Sampling methods, §2-18-110.

Notice.

Eradication of pests and diseases.

Lien for expenses for failure to comply, §2-16-211.

Pests or diseases within state, §2-16-212.

Officers, §2-16-206.

Quorum, §2-16-206.

Reports.

Emergency plant act.

Annual report to governor, §2-16-310.

Rulemaking regarding aflatoxin, §2-18-109.

Rules and regulations, §2-16-207.

Review, §2-16-214.

State treasurer.

Deposit of funds with state treasurer, §2-16-104.

Term of members, §2-16-206.

Trees.

Compensation for trees destroyed, §2-16-101.

Violations.

Penalties, §2-16-203.

AGRICULTURE —Cont'd**Plant diseases.**

Acts not to conflict with federal law,
§2-16-205.

Agents.

Act of employee or agent deemed act
of principal, §2-16-204.

Civil penalties, §2-16-203.

Liens.

Failure to comply with notice,
§2-16-211.

Notice, §2-16-211.

Board to give notice, §2-16-212.

Penalties.

Violations, §2-16-203.

Quarantine.

Emergency plant act, §§2-16-307,
2-16-308.

Receivers.

Duties of receivers of prohibited
plants or products, §2-16-213.

Sale, shipment or disposal of plants or
products, §2-16-210.

Transportation into state prohibited,
§2-16-209.

Quarantine.

Emergency plant act, §§2-16-307,
2-16-308.

Receivers.

Prohibited plants or products.

Duties of receivers, §2-16-213.

Reports.

Emergency plant act.

Annual report of plant board,
§2-16-310.

Research.

Biotechnology research.

Definition of "qualified research,"
§2-8-103.

Tax credits, §2-8-105.

Corn and grain sorghum promotion
board.

Research and extension program,
§2-20-806.

Crops.

Damage or destruction of field crop
products, §2-15-101.

Rules and regulations.

Grading of products and containers.

Plant board.

Promulgation, §2-20-112.

Plant board, §2-16-207.

Quarantine.

Emergency plant act, §2-16-308.

Searches and seizures.**Pests.**

Plant disease, weeds or prohibited
plants brought into state
illegally, §2-16-209.

AGRICULTURE —Cont'd

Seeds, §§2-18-101 to 2-18-111.

Soil amendment, §§2-19-401 to
2-19-414.

Sorghum.

Corn and grain sorghum promotion,
§§2-20-801 to 2-20-806.

Taxation.

Biotechnology development and
training.

Tax credits, §§2-8-103 to 2-8-108.

Transportation.

Plant diseases.

Transportation into state prohibited,
§2-16-209.

Sale, shipment or disposal of plants or
products.

Certificate of inspection, §2-16-210.

Turf grass.

Certification by board, §2-16-109.

United States.

Alligator weed.

Agreements to hold United States
free from claims, §2-16-103.

Grading of products and containers.

Cooperation of board with United
States, §2-20-106.

Federal standards.

Adoption, §2-20-106.

Labeling of fruits and vegetables for
interstate shipment.

United States grades.

Adoption, §2-20-303.

Weeds.

Johnson grass, §§2-16-501 to 2-16-511.

Wheat.

Wheat promotion act, §§2-20-601 to
2-20-610.

Witnesses.

Emergency plant act.

Power of board to summon
witnesses, §2-16-306.

Young and beginning farmer

advisory board, §§2-1-201 to
2-1-206.

ALLIGATOR WEED.**Plant board.**

Agreements to hold United States free
from claims, §2-16-103.

ANIMALS.**Alpacas.**

Alternate livestock, §2-32-101.

Alternate livestock, §2-32-101.

Anthrax spore vaccine.**Sales.**

Advice and consent of state
veterinarian, §2-40-108.

ANIMALS —Cont'd

Bees and honey, §§2-22-101 to 2-22-112.

Boards and commissions.

Livestock and poultry commission, §§2-33-101 to 2-33-401.

Brands and marks.

Livestock, §§2-34-101 to 2-34-213.

Carcasses.

Cremation of dead fowl, §§2-40-401 to 2-40-406.

Disposal of large animal carcasses, §§2-40-1301 to 2-40-1305.

Commercial feeds, §§2-37-101 to 2-37-114.

Cremation.

Dead animals.

Fowl, §§2-40-401 to 2-40-406.

Dead bodies.

Cremation of dead fowl, §§2-40-401 to 2-40-406.

Disposal of large animal carcasses, §§2-40-1301 to 2-40-1305.

Diagnostic testing.

Small animal diagnostic testing, §2-33-112.

Diseases.

Bringing in diseased animal, §2-40-101.

Canine brucellosis, §2-40-110.

Expenses of enforcement of act, §2-40-107.

Horses.

Equine infectious anemia, §§2-40-801 to 2-40-829.

Owners of diseased animals.

Duties, §2-40-104.

Poultry flocks.

Destruction of diseased poultry flocks, §2-40-109.

Drovers, §§2-34-301 to 2-34-304.

Emus.

Alternate livestock, §2-32-101.

Equine infectious anemia, §§2-40-801 to 2-40-805.

Estrays.

Livestock running at large, §§2-38-101 to 2-38-504.

Farm animals.

Livestock.

Shows, §§2-36-101 to 2-36-306.

Fees.

Small animal diagnostic testing, §2-33-112.

Fences.

General provisions, §§2-39-101 to 2-39-111.

ANIMALS —Cont'd**Fowl.**

Disposal of dead fowl, §§2-40-401 to 2-40-406.

Livestock and poultry commission, §§2-33-101 to 2-33-401.

Funds.

Small animal diagnostic testing, §2-33-112.

Guanacos.

Alternate livestock, §2-32-101.

Livestock.

Shows, §§2-36-101 to 2-36-306.

Llamas.

Alternate livestock, §2-32-101.

Ostriches.

Alternate livestock, §2-32-101.

Penalties.

Disposal of large animal carcasses.

Provision violations, §2-40-1303.

Quarantine.

Cattle.

General provisions, §§2-40-1001 to 2-40-1006.

Rheas.

Alternate livestock, §2-32-101.

Rules and regulations.

Small animal diagnostic testing, §2-33-112.

Running at large.

Feral hogs, §2-38-504.

Livestock, §§2-38-101 to 2-38-504.

Small animal diagnostic testing.

Fees, §2-33-112.

Fund.

Established, §2-33-112.

Rules and regulations, §2-33-112.

Tick control, §§2-40-901 to 2-40-906.

ANSWERS.**Seeds.**

Arbitration of defective seed claims.

Answers to complaints against dealer, §2-23-102.

ANTHRAX.**Vaccinations.**

Sale of vaccine, §2-40-108.

APPEALS.**Agriculture.**

Grading of products and containers.

Appeals from inspector's decision to chief inspector, §2-20-114.

Commercial feeds.

Acts, orders or rulings of plant board, §2-37-113.

Nurseries.

Licenses.

Denial, §2-21-110.

APPEALS —Cont'd
Nurseries —Cont'd
 Licenses —Cont'd
 Invalidation, §2-21-111.
Pesticides.
 Decisions of plant board, §2-16-408.
APPLES.
Labeling of fruits and vegetables for interstate shipment.
 Products to which act applies,
 §2-20-303.
APPRAISALS AND APPRAISERS.
Livestock.
 Certificate of appraisement, §2-38-108.
APPROPRIATIONS.
Livestock shows.
 Construction and operation, §2-36-206.
ARBITRATION.
Livestock or poultry production contracts.
 Disputes, §2-32-201.
Seeds.
 Arbitration of defective seed claims,
 §§2-23-101 to 2-23-110.
ARKANSAS CATFISH PROMOTION BOARD, §§2-9-101 to 2-9-112.
ARKANSAS CATFISH PROMOTION FUND, §2-9-112.
ARKANSAS CORN AND GRAIN SORGHUM PROMOTION BOARD, §§2-20-804 to 2-20-806.
ARKANSAS CROP AND RESEARCH FACILITIES PROTECTION, §2-15-101.
ARKANSAS DAIRY COMMITTEE, §2-33-401.
ARKANSAS FEED LAW OF 1997, §§2-37-101 to 2-37-114.
ARKANSAS-OKLAHOMA DISTRICT FAIR AND LIVESTOCK SHOW, §2-36-307.
ARKANSAS RICE CERTIFICATION ACT, §§2-15-201 to 2-15-208.
ARREST.
Livestock and poultry commission.
 Livestock inspectors.
 Powers to arrest, §2-33-108.
ASSESSMENTS.
Boll weevil suppression and eradication.
 Levied on cotton growers.
 Basis, §2-16-614.

ASSESSMENTS —Cont'd
Boll weevil suppression and eradication —Cont'd
 Levied on cotton growers —Cont'd
 Exemptions, §2-16-617.
 Referendum, §2-16-614.
 Conduct, §2-16-615.
 Subsequent referendums,
 §2-16-616.
Cattle.
 Beef promotion and research.
 General provisions, §§2-35-401 to 2-35-407.
Rice.
 Research and promotion act,
 §2-20-507.
Thistle control and eradication.
 Annual assessment, §2-16-801.
Wheat promotion act.
 Grown wheat, §2-20-606.
 Refunds to producers, §2-20-608.
ASSOCIATIONS.
Agricultural cooperative associations, §§2-2-101 to 2-2-313.
Cooperative marketing associations, §§2-2-401 to 2-2-430.
ATTORNEY GENERAL.
Agriculture.
 Emergency plant act.
 Duties of attorney general,
 §2-16-304.
ATTORNEYS' FEES.
Agricultural operations.
 Proceeding to declare nuisance.
 Awarding to prevailing party,
 §2-4-107.
Livestock or poultry production contracts.
 Civil action for violation, §2-32-201.
AUDITS AND AUDITORS.
Boll weevil suppression and eradication.
 Assessments levied on cotton grower.
 Annual audit, §2-16-614.
 Cotton growers' organizations.
 Books and records, §2-16-612.
Fertilizers.
 Right of plant board or agents,
 §2-19-209.
Livestock shows.
 Associations, §2-36-210.

B

BAIT.
Commercial bait and ornamental fish act, §§2-5-201 to 2-5-208.

BANKRUPTCY AND INSOLVENCY.**Grain.**

Public grain warehouses.

Duty of commissioner upon
bankruptcy of warehouseman,
§2-17-236.

BEEF COUNCIL.

General provisions, §§2-35-301 to
2-35-310.

BEEF PROMOTION AND

RESEARCH, §§2-35-401 to
2-35-407.

BEES AND HONEY.**Abandonment.**

Abandoned apiary.

Defined, §2-22-101.

Administration of provisions,
§2-22-104.

Apiaries.

Abandoned apiary.

Defined, §2-22-101.

Defined, §2-22-101.

Equipment.

Defined, §2-22-101.

Inspections, §2-22-107.

Powers of inspectors, §2-22-106.

Standards for inspectors, §2-22-108.

Quarantine, §2-22-112.

Appliances.

Defined, §2-22-101.

Certificate of health.

Bees brought into state, §2-22-111.

Sales.

Copy of certificate to be given by
seller, §2-22-103.

Requirement of certificate,
§2-22-103.

Definitions, §2-22-101.

Diseases.

Defined, §2-22-101.

Duties of persons engaged in
beekeeping upon detection of
disease, §2-22-109.

Quarantine, §2-22-112.

**Duties of persons engaged in
beekeeping,** §2-22-109.

Enforcement of provisions, §2-22-106.

Hives.

Defined, §2-22-101.

Inspections.

Apiaries, §2-22-107.

Powers of inspectors, §2-22-106.

Standards for inspectors, §2-22-108.

Nonresidents.

Registration, §2-22-110.

Notice.

Transporting of bees.

Plant board to be notified, §2-22-111.

BEES AND HONEY —Cont'd**Nucleus.**

Defined, §2-22-101.

Packages.

Defined, §2-22-101.

Plant board.

Administration of provisions,
§2-22-104.

Application for registration, §2-22-110.

Director.

Defined, §2-22-101.

Rules and regulations, §2-22-105.

Transporting bees.

Notice to board, §2-22-111.

Pollination.

Defined, §2-22-101.

Quarantine, §2-22-112.

Registration.

Nonresidents, §2-22-110.

Required, §2-22-110.

Rules and regulations.

Plant board, §2-22-105.

Sales.

Certificate of health.

Copy of certificate to be given by
seller, §2-22-103.

Requirement of certificate,
§2-22-103.

Section head.

Defined, §2-22-101.

Transporting of bees, §2-22-111.

Violations of provisions.

Misdemeanors, §2-22-102.

Prohibited acts, §2-22-103.

BILLS OF SALE.**Livestock sales.**

Bill of sale required, §2-35-212.

**BIOTECHNOLOGY DEVELOPMENT
AND TRAINING,** §§2-8-101 to
2-8-109.**BOARDS AND COMMISSIONS.**

Catfish promotion board, §§2-9-101 to
2-9-112.

**Corn and grain sorghum promotion
board,** §§2-20-804 to 2-20-806.

Fairs.

Northeast Arkansas district fair
advisory board, §2-36-302.

Fire and advisory board, §§2-16-701
to 2-16-705.

Chairpersons, §2-16-703.

Creation, §2-16-701.

Meetings, §2-16-703.

Members, §2-16-702.

Regulations, §2-16-704.

Reports, §2-16-705.

BOARDS AND COMMISSIONS

—Cont'd

Livestock and poultry commission,
§§2-33-101 to 2-33-401.**Milk stabilization board,** §§2-10-101
to 2-10-104.**Poultry.**Livestock and poultry commission,
§§2-33-101 to 2-33-401.**BOLL WEEVIL SUPPRESSION AND
ERADICATION,** §§2-16-601 to
2-16-617.**Assessments.**

Levied on cotton grower.

Basis, §2-16-614.

Exemptions, §2-16-617.

Failure to pay, §2-16-617.

Referendum, §2-16-614.

Conduct, §2-16-615.

Subsequent referendums,
§2-16-616.**Audits and auditors.**

Assessments levied on cotton grower.

Annual audit, §2-16-614.

Cotton growers' organizations.

Books and records, §2-16-612.

Bond issues.Cotton growers' organizations,
§2-16-612.**Bonds, surety.**

Cotton growers' organizations.

Employees or agents handling funds,
§2-16-612.**Certificates of compliance,** §2-16-617.**Certification of cotton growers'
organizations,** §§2-16-612,
2-16-613.

Eligibility, §2-16-612.

Revocation, §2-16-613.

Citation of subchapter, §2-16-601.**Construction and interpretation.**

Liberal construction, §2-16-602.

Cooperative programs authorized,
§2-16-606.**Cotton growers' organizations,**
§2-16-612.

Assessments, §2-16-614.

Referendum, §2-16-614.

Conduct, §2-16-615.

Subsequent referendums,
§2-16-616.

Board of directors, §2-16-612.

Bond issues, §2-16-612.

Bonds, surety.

Employees or agents handling funds,
§2-16-612.

Certification, §§2-16-612, 2-16-613.

**BOLL WEEVIL SUPPRESSION AND
ERADICATION** —Cont'd**Cotton growers' organizations**

—Cont'd

Loans, §2-16-612.

Records.

Availability for inspection or audit
by plant board, §2-16-612.

Referendum.

Assessments, §2-16-614.

Conduct, §2-16-615.

Subsequent referendums,
§2-16-616.**Counterfeiting.**Certificates, permits or other
documents provided in
subchapter, §2-16-604.**Criminal penalties,** §2-16-604.**Declaration of policy,** §2-16-602.**Definitions,** §2-16-603.**Destruction of cotton.**

Assessments.

Failure to pay, §2-16-617.

Eradication zones.

Grower failing to meet

requirements, §2-16-610.

Noncommercial or volunteer cotton,
§2-16-611.**Eradication zones.**Areas where cotton cannot be planted,
§2-16-610.

Commercial cotton growers.

Participation in program, §2-16-610.

Designation, §2-16-610.

Destruction of cotton.

Grower failing to meet

requirements, §2-16-610.

Noncommercial or volunteer cotton,
§2-16-611.

Noncommercial cotton.

Destruction or treatment, §2-16-611.

Prohibiting planting, §2-16-610.

Penalties, §2-16-610.

Treatment of cotton.

Noncommercial or volunteer cotton,
§2-16-611.

Volunteer cotton.

Destruction or treatment, §2-16-611.

Exemptions from assessment,
§2-16-617.**Forgery.**Certificates, permits or other
documents provided in
subchapter, §2-16-604.**Initiative and referendum.**Assessment levied upon cotton
growers.

Conduct, §2-16-615.

BOLL WEEVIL SUPPRESSION AND ERADICATION —Cont'd**Initiative and referendum —Cont'd**

Assessment levied upon cotton growers
—Cont'd

Referendum, §2-16-614.

Subsequent referendums, §2-16-616.

Injunctions.

Destruction of cotton.

Failure to pay assessments.

Cotton not destroyed, §2-16-617.

Inspections.

Authority of plant board, §2-16-607.

Cotton growers' organizations.

Books and records, §2-16-612.

Liens.

Failure to pay assessments, §2-16-617.

Loans.

Cotton growers' organizations,
§2-16-612.

Noncommercial cotton.

Eradication zones.

Destruction or treatment, §2-16-611.

Prohibition.

On growing, §2-16-610.

Notice.

Eradication zones.

Noncommercial cotton prohibition
and requirement of commercial
cotton grower participation,
§2-16-610.

Nuisances.

Failure to pay assessments.

Destruction of cotton.

Cotton not destroyed deemed
public nuisance, §2-16-617.

Penalties.

Assessments.

Failure to pay, §2-16-617.

Criminal penalties, §2-16-604.

Eradication zones, §2-16-610.

Petitions.

Failure to pay assessments.

Destruction of cotton.

Cotton not destroyed deemed
public nuisance.

Petition to condemn and destroy
cotton, §2-16-617.

Plant board.

Cooperative programs.

Authorized, §2-16-606.

Defined, §2-16-603.

Entry of premises, §2-16-607.

Eradication zones.

Designation, §2-16-610.

Destruction or treatment.

Noncommercial or volunteer
cotton, §2-16-611.

BOLL WEEVIL SUPPRESSION AND ERADICATION —Cont'd**Plant board —Cont'd**

Inspections, §2-16-607.

Quarantine, §2-16-609.

Reports.

Furnished to plant board, §2-16-608.

Rules promulgation, §2-16-605.

Publication.

Eradication zones.

Noncommercial cotton prohibition
and requirement of commercial
cotton grower participation,
§2-16-610.

Purposes of subchapter, §2-16-602.**Quarantine, §2-16-609.****Records.**

Cotton growers' organizations.

Availability for inspection or audit,
§2-16-612.

Regulated articles.

Defined, §2-16-603.

Moving infested regulated articles into
state, §2-16-604.

Reports.

Furnishing to plant board, §2-16-608.

Right of entry.

Plant board, §2-16-607.

Rules and regulations.

Promulgation, §2-16-605.

Quarantine, §2-16-609.

Violations.

Criminal penalties, §2-16-604.

Title of subchapter, §2-16-601.**Treatment of cotton.**

Eradication zones.

Noncommercial or volunteer cotton,
§2-16-611.

Undue financial hardship

exemptions from assessments,
§2-16-617.

Violations of subchapter.

Criminal penalties, §2-16-604.

Volunteer cotton.

Eradication zones.

Destruction or treatment, §2-16-611.

Warrants.

Right of entry.

Issuance by judge, §2-16-607.

BOND ISSUES.**Boll weevil suppression and eradication.**

Cotton growers' organizations,
§2-16-612.

BONDS, SURETY.**Agriculture.**

Grading of products and containers.

Inspectors and employees, §2-20-110.

BONDS, SURETY —Cont'd**Agriculture —Cont'd**

Plant board.

Director, §2-16-208.

Boll weevil suppression eradication.

Cotton growers' organizations.

Employees or agents handling funds,
§2-16-612.

Catfish processor fair practices.

Purchase methods, §2-6-107.

Livestock.

Running at large.

Bond of taker-up, §2-38-109.

Record of bond of taker-up,
§2-38-110.

Livestock and poultry commission.

Executive director, §2-33-104.

State veterinarian, §2-33-105.

Livestock shows.

Executive officer, §2-36-208.

Amount of bond, §2-36-209.

Poultry.

Nonresident commercial poultry
buyers, §2-35-213.

Insuring payment of poultry
purchase, §2-35-213.

Purchase without bond, §2-35-213.

BRANDS.**Fertilizers.**

Registration, §2-19-202.

Funds.

Brand registry fund.

Created, §2-34-213.

Soil amendment.

Misbranding defined, §2-19-402.

BRIBERY.**Agriculture.**

Grading of products and containers.

Influencing inspector, §2-20-111.

BRUCELLOSIS.**Calves.**

Vaccination.

Brucellosis indemnities, §2-40-507.

Brucellosis vaccination program,
§2-40-502.

Calves vaccinated before leaving
market, §2-40-502.

Cooperative agreements with United
States department of
agriculture, §2-40-506.

Identification of vaccinated calves,
§2-40-502.

Inspections.

Right of entry, §2-40-505.

Misdemeanors.

Violations a misdemeanor,
§2-40-501.

BRUCELLOSIS —Cont'd**Calves —Cont'd**

Vaccination —Cont'd

Refusal to vaccinate calves,
§2-40-504.

Removing or simulating official
marks, §2-40-504.

Rules and regulations.

Promulgation by commission,
§2-40-505.

Vaccine used, §2-40-503.

Veterinarians.

Commission to employ
veterinarians or agents,
§2-40-505.

Violations.

Misdemeanors, §2-40-501.

Canine brucellosis, §2-40-110.

Control and eradication, §2-40-210.

Control areas.

Certification, §2-40-601.

Counties.

Modified certified brucellosis free
areas.

Action to qualify county as certified
area, §2-40-602.

Criminal offenses, §2-40-210.

Fees.

Vaccination.

Funding of brucellosis program,
§2-40-206.

Hearings.

Depopulation of herds, §2-40-210.

Indemnities.

Payment by commission, §2-40-507.

Legislative intent, §2-40-508.

Livestock and poultry commission.

Control and eradication of brucellosis,
§2-40-210.

Depopulation, negotiation and hearing
procedures.

Adoption of rules and regulations,
§2-40-210.

Legislative intent, §2-40-508.

Modified certified brucellosis free
areas.

Rules and regulations of
commission, §2-40-603.

Payment of indemnities, §2-40-507.

Vaccination of calves.

Employment of veterinarians or
agents, §2-40-505.

Rules and regulations of
commission, §2-40-505.

Modified certified brucellosis free areas.

Action to qualify counties, §2-40-602.

Petition, §2-40-601.

BRUCELLOSIS —Cont'd**Modified certified brucellosis free areas —Cont'd**

Requirements for certification,
§2-40-602.

Rules and regulations of commission,
§2-40-603.

Notice.

Eradication of herds identified with
brucellosis, §2-40-210.

Petitions.

Modified certified brucellosis free
areas, §2-40-601.

Rules and regulations.

Depopulation, negotiation and hearing
procedures.

Livestock and poultry commission,
§2-40-210.

Modified certified brucellosis free
areas.

Livestock and poultry commission
rules and regulations,
§2-40-603.

State veterinarian.

Depopulation of herds, §2-40-210.

Vaccination.

Calves vaccinated before leaving
market, §2-40-502.

Cooperative agreements with United
States department of agriculture,
§2-40-506.

Fees.

Funding of brucellosis program,
§2-40-206.

Female calves, §2-40-502.

Identification of vaccinated calves,
§2-40-502.

Inspections.

Authority to enter premises,
§2-40-505.

Misdemeanors.

Violations of act, §2-40-501.

Refusal to vaccinate calves, §2-40-504.

Removal or simulating official marks,
§2-40-504.

Rules and regulations.

Promulgation by commission,
§2-40-505.

Vaccine used, §2-40-503.

Veterinarians.

Commission to employ veterinarians
or agents, §2-40-505.

Violations.

Misdemeanors, §2-40-501.

BUDGETS.**Catfish promotion board.**

Annual submission, §2-9-108.

C**CALCIUM.**

Labeling requirements, §2-19-303.

CANINE BRUCELLOSIS, §2-40-110.

CARRIERS.**Cattle.**

Transfer record.

Receiving without copy, §2-35-209.

Goats.

Transfer record.

Receiving without copy of transfer
record, §2-35-209.

Hogs.

Transfer record.

Receiving without copy, §2-35-209.

Horses.

Transfer record.

Receiving without copy, §2-35-209.

Livestock.

Transfer record.

Receiving livestock without copy,
§2-35-209.

Sheep.

Transfer record.

Receiving without copy, §2-35-209.

CATFISH MARKETING.

Catfish promotion board, §§2-9-101 to
2-9-112.

**CATFISH PROCESSOR FAIR
PRACTICES.**

Administration of chapter, §2-6-104.

Bonds, surety.

Purchase methods, §2-6-107.

Capable of use as human food.

Defined, §2-6-103.

Cash sale.

Defined, §2-6-103.

Catfish.

Defined, §2-6-103.

Citation of chapter, §2-6-101.

Damages.

Unlawful practices, §2-6-106.

Definitions, §2-6-103.

Delays in payment.

Unfair practices, §2-6-107.

Direct retail sale.

Defined, §2-6-103.

Fees.

Registration, §2-6-105.

Injunctions, §2-6-106.

Legislative declaration and intent.

Purpose of chapter, §2-6-102.

Payment delays.

Unfair practices, §2-6-107.

CATFISH PROCESSOR FAIR PRACTICES —Cont'd

Penalties.

Unlawful practices, §2-6-106.

Plant board.

Administration of chapter, §2-6-104.

Definition of "board," §2-6-103.

Injunctions.

Authority to seek, §2-6-106.

Rules and regulations.

Authority to promulgate, §2-6-104.

Processor.

Defined, §2-6-103.

Producer.

Defined, §2-6-103.

Product.

Defined, §2-6-103.

Prohibited practices, §2-6-106.

Purchase methods, §2-6-107.

Purpose of chapter, §2-6-102.

Receivership, §§2-6-109 to 2-6-123.

Administrative procedures.

Applicability, §2-6-115.

Assets.

Preservation and protection,
§2-6-109.

Bonds, surety, §2-6-116.

Distribution of proceeds, §2-6-122.

Claims filing deadline.

Notice, §2-6-117.

Designees of director, §2-6-114.

Distribution of catfish to producers,
§2-6-119.

Duties of director, §2-6-114.

Notice.

Claims filing deadline, §2-6-117.

Plan for disposition of catfish.

Hearings on plan, §2-6-111.

Publication, §2-6-113.

Weighing of ticketholders, §2-6-112.

Operation of business.

Continued operation, §2-6-120.

Petition, §2-6-109.

Plan for disposition of catfish,
§2-6-110.

Distribution to producers, §2-6-119.

Hearings on plan, §2-6-111.

Reimbursement of director, §2-6-121.

Reports.

Final report, §2-6-123.

Sale of processed catfish, §2-6-118.

Distribution of proceeds, §2-6-122.

Service.

Plan for disposition of catfish.

Notice of hearing on plan,
§2-6-111.

Registration.

Applications, §2-6-105.

CATFISH PROCESSOR FAIR PRACTICES —Cont'd

Registration —Cont'd

Fees, §2-6-105.

Processors, §2-6-105.

Remedies.

Additional nature of remedies for
violations of chapter, §2-6-106.

Rules and regulations.

Plant board.

Authority to promulgate rules and
regulations, §2-6-104.

Sales.

Cash sale.

Defined, §2-6-103.

Direct retail sale.

Defined, §2-6-103.

Methods of purchase, §2-6-107.

Scales used to weigh catfish and foreign materials, §2-6-107.

Secured party.

Defined, §2-6-103.

State plant board.

Purchase methods.

Enforcement of section, §2-6-107.

Suspension.

Registrant processors, §2-6-105.

Exception, §2-6-105.

Title of chapter, §2-6-101.

Unlawful practices, §2-6-106.

Delays in payment, §2-6-107.

Weights and measures.

Weighing catfish at time of delivery to
processor, §2-6-107.

Scales used to weigh, §2-6-107.

CATFISH PROMOTION BOARD, §§2-9-101 to 2-9-112.

Arkansas catfish promotion fund, §2-9-112.

Assessments.

Application of funds, §2-9-105.

Collection agency, §2-9-107.

Collection violations, §2-9-111.

Continuing assessment until
terminated, §2-9-107.

Election vote on levy of assessment,
§2-9-107.

Imposition, §2-9-103.

Penalties for noncompliance, §2-9-111.

Recordkeeping requirements, §2-9-109.

Refund claim form, §2-9-110.

Reporting and remittance violations,
§2-9-111.

Use of funds, §2-9-104.

Audits.

Annual agency audit, §2-9-107.

Budget.

Annual preparation, §2-9-107.

CATFISH PROMOTION BOARD

—Cont'd

Commercial catfish processors.

Defined, §2-9-102.

Election vote on levy of assessment,
§2-9-107.One percent remittance deduction,
§2-9-107.

Recordkeeping requirements, §2-9-109.

Registered ballots, §2-9-106.

Resubmission for vote upon
disapproval, §2-9-107.

Voter referenda, §2-9-106.

Composition, §2-9-103.**Definitions**, §2-9-102.**Executive directors.**

Salary provision, §2-9-103.

Nomination, §2-9-103.**Powers and duties**, §2-9-104.**Principal office location**, §2-9-103.**Public policy**, §2-9-101.**Removal**, §2-9-103.**Residency requirement**, §2-9-103.**Rulemaking authority**, §2-9-104.**Term of office**, §2-9-103.**Vacancies**, §2-9-103.**Voter referenda**, §2-9-106.**CATS.****Commercial feeds**, §§2-37-101 to
2-37-114.**Diagnostic testing.**Small animal diagnostic testing,
§2-33-112.**Diseases.**Bringing in diseased animal,
§2-40-101.

Duties of owner, §2-40-104.

Feed.Commercial feeds, §§2-37-101 to
2-37-114.**Small animal diagnostic testing**,
§2-33-112.**CATTLE.****Accounts and accounting.**

Beef promotion and research.

National beef promotion account.

Creation of account, §2-35-406.

State beef promotion account.

Creation of account, §2-35-407.

National beef promotion account.

Creation, §2-35-406.

Anthrax spore vaccine.

Sale.

Advice and consent of state
veterinarian, §2-40-108.**Arkansas beef council**, §§2-35-301 to
2-35-310.**CATTLE —Cont'd****Assessments.**

Beef promotion and research.

General provisions, §§2-35-401 to
2-35-407.**Beef council.**

Appointment of members, §2-35-303.

Assessments.

Applicability, §2-35-304.

Beef promotion and research.

General provisions, §§2-35-401 to
2-35-407.Collection of assessment by
purchasers, §2-35-305.

Disposition, §2-35-308.

Duration, §2-35-304.

Election on levy of assessment on
cattle, §2-35-304.Penalty for failure to pay
assessments, §2-35-302.

Petition to discontinue, §2-35-304.

Reports, §2-35-306.

Rules and regulations regarding
reporting and remittance of
assessments, §2-35-306.Collection of assessment by purchaser,
§2-35-305.

Commissioner of revenues.

Inspection of records and
regulations, §2-35-307.

Penalties.

Collection of penalties levied,
§2-35-302.Rules and regulations regarding
records, §2-35-306.

Created, §2-35-303.

Election of members, §2-35-303.

Fund.

Created, §2-35-308.

National beef promotion account.

Creation of account in fund,
§2-35-406.

State beef promotion account.

Creation of account in fund,
§2-35-407.Use of funds to enhance cattle
industry, §2-35-309.

Inspections.

Records, §2-35-307.

Reports.

Buyers' reports, §2-35-307.

Levy.

Election on levy of assessment on
cattle, §2-35-304.

Meetings, §2-35-303.

Officers, §2-35-303.

Penalties.

Disposition, §2-35-308.

CATTLE —Cont'd**Beef council —Cont'd****Penalties —Cont'd**

Failure to allow inspection of records, §2-35-302.

Failure to report or pay assessments, §2-35-302.

Petitions.

Discontinuing assessments, §2-35-304.

Producers.

Refunds to producers, §2-35-310.

Program to enhance cattle industry.

Use of funds, §2-35-309.

Promotion of growth and development of beef cattle industry.

Purpose of act, §2-35-301.

Purchasers.

Collection of assessment by purchasers, §2-35-305.

Defined, §2-35-305.

Purpose of act, §2-35-301.**Records.**

Inspection of records, §2-35-307.

Rules and regulations, §2-35-306.

Refunds to cattle producers, §2-35-310.**Reports.**

Penalty for failure to report, §2-35-302.

Rules and regulations governing records, §2-35-306.**Terms of members, §2-35-303.****Vacancies, §2-35-303.****Beef promotion and research.****Accounts and accounting.**

National beef promotion account.

Creation of account, §2-35-406.

State beef promotion account.

Creation of account, §2-35-407.

Applicability of subchapter, §2-35-402.**Assessments.**

Generally, §2-35-403.

Beef council fund.

National beef promotion account.

Creation in fund, §2-35-406.

State beef promotion account.

Creation of account in fund, §2-35-407.

Conduct of program, §2-35-403.**Construction and interpretation.**

Applicability of subchapter, §2-35-402.

Funds.

Beef council fund.

National beef promotion account.

Creation of account in fund, §2-35-406.

CATTLE —Cont'd**Beef promotion and research****—Cont'd****Funds —Cont'd****Beef council fund —Cont'd**

State beef promotion account.

Creation of account in fund, §2-35-407.

Disposition of funds, §2-35-405.

Legislative declaration.

Purpose of subchapter, §2-35-401.

National beef promotion account.

Creation, §2-35-406.

Purpose of subchapter, §2-35-401.

Records, §2-35-403.

Rules and regulations.

Authority of director to adopt, §2-35-404.

State beef promotion account.

Creation, §2-35-407.

Brands and marks.

General provisions, §§2-34-101 to 2-34-213.

Carriers.

Transfer record.

Receiving without copy, §2-35-209.

Commercial feeds, §§2-37-101 to 2-37-114.**Drovers, §§2-34-301 to 2-34-304.****Elections.**

Beef council.

Election on levy of assessment on cattle, §2-35-304.

Estrays.

General provisions, §§2-38-101 to 2-38-408.

Fees.

Pseudorabies control and eradication program funding, §2-40-1201.

Fences.

General provisions, §§2-39-101 to 2-39-111.

Funds.

Beef promotion and research.

Beef council fund.

National beef promotion account.

Creation of account in fund, §2-35-406.

State beef promotion account.

Creation of account in fund, §2-35-407.

Disposition of funds, §2-35-405.

Guardians.

Brands of minors owning cattle separate from guardian, §2-34-103.

CATTLE —Cont'd**Impoundment.**

Quarantine.

Impounding stock across quarantine line, §2-40-1005.

Inspections.

Beef council.

Inspection of records and regulations, §2-35-307.

Interstate commerce.

Federal regulations exclusively govern interstate movement, §2-35-214.

Interstate shipping points, §2-35-215.

Livestock shows, §§2-36-101 to 2-36-306.**Minors.**

Brands and marks.

Minors owning cattle separate from father or guardian, §2-34-103.

Peace officers.

Quarantine.

Enforcing quarantine regulations, §2-40-1005.

Penalties.

Beef council.

Disposition of penalties and assessments, §2-35-308.

Transfer record.

Violations of act, §2-35-203.

Perjury.

Transfer records.

Law of perjury applicable, §2-35-207.

Quarantine.

Enforcement of quarantine regulations.

Peace officers to enforce, §2-40-1005.

Governor.

Changes in quarantine line.

Submission to governor, §2-40-1003.

Jurisdiction.

Jurisdiction over violation, §2-40-1002.

Transporting cattle across lines, §2-40-1002.

Penalties.

Driving cattle across state lines, §2-40-1004.

State quarantine line.

Permitting cattle to cross, §2-40-1004.

Transporting cattle across quarantine lines, §2-40-1002.

Railroads.

Excreta.

Throwing excreta or other refuse, §2-40-1006.

CATTLE —Cont'd**Quarantine —Cont'd**

Railroads —Cont'd

Rights of way.

Fencing, §2-40-1006.

Transporting cattle through state, §2-40-1003.

Unloading cattle beyond line, §2-40-1006.

State quarantine line.

Animals drifting across.

Other persons not to permit, §2-40-1004.

Penalty, §2-40-1001.

Changes, §2-40-1003.

Driving stock back across line.

Duty of officer, §2-40-1005.

Penalty, §2-40-1004.

Established, §2-40-1003.

Impounding stock across line, §2-40-1005.

Penalties.

Permitting cattle to cross, §2-40-1004.

Permitting cattle to cross, §2-40-1004.

Railroads.

Transporting cattle through state, §2-40-1003.

Unloading cattle beyond lines, §2-40-1006.

Resident owners.

Not to permit animals to drift across, §2-40-1001.

Transporting cattle across quarantine lines, §2-40-1002.

Jurisdiction of violations, §2-40-1002.

Preventing transportation across line.

Recovery of expenses, §2-40-1002.

United States quarantine lines.

Driving or transporting cattle across unlawful, §2-40-1002.

Jurisdiction over violations, §2-40-1002.

Penalty for violations, §2-40-1002.

Preventing transportation across line.

Recovery of expenses, §2-40-1002.

Rabies.

Pseudorabies control and eradication program.

Levy of fees to fund, §2-40-1201.

Vaccination.

Cost of vaccine, §2-40-1101.

CATTLE —Cont'd**Railroads.**

Quarantine.

Excreta.

Throwing excreta or other refuse,
§2-40-1006.

Fencing right of way, §2-40-1006.

Transporting cattle through state
permitted, §2-40-1003.Unloading cattle beyond quarantine
line, §2-40-1006.**Records.**Beef promotion and research,
§2-35-403.

Stockyards, §2-35-211.

Transportation.

One county to another, §2-35-204.

Reports.

Beef council.

Assessments, §2-35-306.

Rules and regulations.

Beef council.

Promulgation of rules and
regulations governing records.Reports and remittances of
assessments, §2-35-306.

Beef promotion and research.

Authority of director to adopt
appropriate rules and
regulations, §2-35-404.**Running at large, §§2-38-101 to
2-38-408.****Sales.**

Bill of sale.

Required, §2-35-212.

Shows.Livestock shows, §§2-36-101 to
2-36-306.**Slaughter.**

Sales for slaughter.

Bill of sale required, §2-35-212.

Stockyards.

Records.

Receiving livestock without copy of
transfer record, §2-35-209.

Required, §2-35-211.

Tick control, §§2-40-901 to 2-40-906.**Transportation.**

One county to another.

Records, §2-35-204.

Transfer records.

Animals named in act include those
dead or alive, §2-35-201.

Contents, §2-35-204.

Copies filed with clerk, §2-35-208.

Filing with person taking
acknowledgments, §2-35-208.

Form, §2-35-205.

CATTLE —Cont'd**Transportation —Cont'd**

Transfer records —Cont'd

Inspection, §2-35-210.

Perjury.

Law applicable, §2-35-207.

Persons taking acknowledgment.

Fees, §2-35-208.

Receiving livestock without copy of
record, §2-35-209.

Verification, §2-35-206.

Violations.

Penalty, §2-35-203.

CEDAR TREES.**Compensation for trees destroyed,
§2-16-101.**Presentation of claims to county court,
§2-16-101.**CENSUS.****Northeast Arkansas district fair
advisory board.**Reapportionment of board after
census, §2-36-302.**CLAIMS.****Agriculture.**

Claims committee, §2-16-309.

Emergency plant act, §2-16-309.

Seeds.Arbitration of defective seed claims,
§§2-23-101 to 2-23-110.**Soil amendment.**Plant board may require proof of
claims, §2-19-407.**Trees and timber.**Compensation for trees destroyed,
§2-16-101.**COMMERCIAL BAIT AND
ORNAMENTAL FISH ACT,
§§2-5-201 to 2-5-208.****COMMERCIAL FEEDS.****Adulteration, §2-37-107.**

Prohibited acts, §2-37-108.

Appeals.Acts, orders or rulings of plant board,
§2-37-113.**Citation of act, §2-37-101.****Definitions, §2-37-103.****Detained commercial feeds,
§2-37-112.****Inspections, §2-37-111.**

Fees, §2-37-109.

Labels, §2-37-105.

Misbranding, §2-37-106.

Prohibited acts, §2-37-108.

Licenses, §2-37-104.

COMMERCIAL FEEDS —Cont'd**Misbranding**, §2-37-106.

Prohibited acts, §2-37-108.

Notice.

Inspections, §2-37-111.

Penalties, §2-37-113.**Prohibited acts**, §2-37-108.**Records**, §2-37-109.**Registration**, §2-37-104.

Failure or refusal to register.

Prohibited acts, §2-37-108.

Rules and regulations, §2-37-110.**Sampling and analysis**, §2-37-111.**Searches and seizures.**Condemnation and confiscation,
§2-37-112.**State plant board.**Administration of provisions,
§2-37-102.Cooperation with other entities,
§2-37-114.

Definition of "board," §2-37-103.

Judicial review of board, §2-37-113.

Regulations, §2-37-110.

Withdrawal from distribution orders,
§§2-37-112, 2-37-113.**Title of act**, §2-37-101.**COMMERCIAL FERTILIZERS,**

§§2-19-201 to 2-19-212.

COMMON CARRIERS.**Livestock.**

Transfer records, §2-35-209.

COMPLAINTS.**Seeds.**

Arbitration of defective seed claims.

Complaints against dealers.

Filing fee, §2-23-102.

Prerequisite to legal action,
§2-23-102.Compliance with section not
required where notice not
typed on container or label,
§2-23-102.**COMPOST.****Natural organic fertilizers,**

§§2-19-501 to 2-19-503.

**CONFIDENTIALITY OF
INFORMATION.****Agriculture.**

Farm mediation.

Disclosure of information, §2-7-202.

CONFLICT OF LAWS.**Cooperative marketing associations.**Applicability of conflicting laws,
§2-2-429.**CONFLICT OF LAWS —Cont'd****Livestock and poultry commission.**Disease or pest control and
eradication.Repeal of provisions in direct
conflict, §2-40-201.**CONFLICTS OF INTEREST.****Cooperative marketing associations.**Contracts with association prohibited,
§2-2-414.**CONTAINERS.****Agriculture.**Grading of products and containers,
§§2-20-101 to 2-20-117.**Fertilizers.**

Analysis, §2-19-205.

Fruits.Labeling of fruits and vegetables for
interstate shipment, §§2-20-301 to
2-20-310.**Interstate commerce.**

Fruits and vegetables.

Labeling for interstate shipment,
§§2-20-301 to 2-20-310.**CONTEMPT.****Equine infectious anemia,
noncompliance with chapter,**
§2-40-802.**CONTRACTS.****Agricultural cooperative
associations.**

Breach of contract.

Bylaws may fix liquidated damages,
§2-2-117.

Penalty for inducing, §2-2-118.

Remedy, §2-2-117.

Marketing contracts, §2-2-116.

Participation contracts, §2-2-116.

Power to contract, §2-2-106.

Restraint of trade, §2-2-122.

Breach of contract.Agricultural cooperative associations,
§§2-2-117, 2-2-118.

Cooperative marketing associations.

Inducing breach of contract.

Penalties, §2-2-420.

Injunctions, §2-2-419.

Cooperative marketing associations.

Directors.

Contracts with association
prohibited, §2-2-414.

Inducing breach of contract, §2-2-420.

Injunctions for breach of contract,
§2-2-419.

Liquidated damages, §2-2-419.

Marketing contracts.

Execution, §2-2-419.

CONTRACTS —Cont'd**Cooperative marketing associations —Cont'd**

Other associations, §2-2-424.

Restraints of trade, §2-2-426.

Livestock.

Production contracts.

Definitions, requirements, disputes, arbitration, violations, relief, §2-32-201.

Poultry production contracts, §2-32-201.**COOPERATIVE ASSOCIATIONS.****Agriculture.**

Agricultural cooperative associations, §§2-2-101 to 2-2-313.

Cooperative marketing associations, §§2-2-401 to 2-2-430.

Marketing associations, §§2-2-401 to 2-2-430.**COOPERATIVE MARKETING ASSOCIATIONS.****Activities of association, §2-2-405.****Articles of incorporation.**

Amendments, §2-2-409.

Fees, §2-2-410.

Filing, §2-2-409.

Contents, §2-2-408.

Filing fees, §2-2-410.

Subscriptions, §2-2-408.

Bylaws, §2-2-411.

Adoption, §2-2-411.

Liquidated damages for breach of marketing contract, §2-2-419.

Transfer of common stock, §2-2-417.

Certificates of membership, §2-2-417.**Citation of act.**

Short title, §2-2-401.

Conflict of laws.

Applicability of conflicting laws, §2-2-429.

Conflicts of interest.

Contracts with association prohibited, §2-2-414.

Contracts.

Directors.

Contracts with association prohibited, §2-2-414.

Inducing breach of contract, §2-2-420.

Injunctions for breach of contract, §2-2-419.

Liquidated damages, §2-2-419.

Marketing contracts.

Execution, §2-2-419.

Other associations, §2-2-424.

Restraints of trade, §2-2-426.

COOPERATIVE MARKETING ASSOCIATIONS —Cont'd**Conversion to nonprofit corporate status, §2-2-430.****Corporations.**

General corporation laws.

Applicability, §2-2-428.

Damages.

Breach of marketing contract.

Fixing liquidated damages, §2-2-419.

Debts.

Liability of members for debts of association, §2-2-417.

Definitions, §2-2-403.**Directors.**

Compensation, §2-2-414.

Conflicts of interest.

Contracts with association prohibited, §2-2-414.

Election, §2-2-414.

Officers, §2-2-415.

Removal, §2-2-416.

Removal, §2-2-416.

Vacancies, §2-2-414.

Division of territory into districts.

Election of directors according to districts, §2-2-414.

Elections.

Directors, §2-2-414.

Existing associations.

Adoption of law, §2-2-425.

Fees.

Amendments to articles, §2-2-410.

Filing fees, §2-2-410.

Existing associations, §2-2-425.

Franchise taxes.

Exemption of associations, §2-2-427.

General corporation laws.

Applicability, §2-2-428.

Injunctions.

Breach of marketing contract, §2-2-419.

Interest in other corporations or associations.

Authorized, §2-2-421.

Warehousing, §2-2-423.

Investments.

Reserves.

Power to establish and invest, §2-2-406.

Legislative declaration.

Purpose of provisions, §2-2-402.

License taxes.

Exemptions, §2-2-427.

Meetings.

Notice.

Regular and special meetings, §2-2-413.

COOPERATIVE MARKETING ASSOCIATIONS —Cont'd

Meetings —Cont'd

- Regular meetings.
Notice, §2-2-413.
- Special meetings.
Notice, §2-2-413.

Members.

- Admission of members, §2-2-407.
- Defined, §2-2-403.
- Matters referred to entire membership, §2-2-418.
- Nonstock associations, §2-2-407.

Monopolies.

- Associations and contracts not in restraint of trade, §2-2-426.

Nonprofit corporate status.

- Conversion to, §2-2-430.

Nonstock associations.

- Members other than natural persons, §2-2-407.

Notice.

- Regular and special meetings, §2-2-413.

Officers, §2-2-415.

- Removal, §2-2-416.

Organization.

- Persons who may organize, §2-2-404.

Other associations.

- Contracts and agreements, §2-2-424.
- Interest in other associations, §2-2-423.
- Purchase of stock or interest, §2-2-421.
- Warehouses, §2-2-423.

Person.

- Who may organize, §2-2-404.

Powers, §2-2-406.

Price fixing.

- Associations and contracts not in restraint of trade, §2-2-426.

Promissory notes.

- Acceptance of notes of members, §2-2-417.

Property.

- Powers as to property, §2-2-406.

Purchase of stock or interest in another corporation or association, §2-2-421.

Purpose of provisions, §2-2-402.

Purposes of association, §2-2-405.

Real property.

- Powers as to real property, §2-2-406.

Reports.

- Annual report, §2-2-422.
- Spreading false reports.
Penalty, §2-2-420.

Reserves.

- Power to establish and invest, §2-2-406.

COOPERATIVE MARKETING ASSOCIATIONS —Cont'd

Restraints of trade.

- Associations and contracts not in restraint of trade, §2-2-426.

Short title of act, §2-2-401.

Status.

- Nonprofit associations, §2-2-403.

Stock and stockholders.

- Amount of common stock allowed, §2-2-417.
- Issuance, §2-2-407.
- Preferred stock, §2-2-417.
- Matters referred to stockholders, §2-2-418.
- Payment required, §2-2-417.
- Purchase of common stock by association, §2-2-417.
- Purchase of stock in another corporation or association, §2-2-421.
- Security for payment of notes, §2-2-417.
- Transfer of common stock, §2-2-417.
- Votes, §2-2-417.

Taxation.

- Exemption from franchise or license tax, §2-2-427.

Title of act.

- Short title, §2-2-401.

Warehouses.

- Interest in other corporations or associations, §2-2-423.

COOPERATIVES.

Agricultural cooperative

- associations, §§2-2-101 to 2-2-313.**

Cooperative marketing associations, §§2-2-401 to 2-2-430.

CORN AND GRAIN SORGHUM

PROMOTION, §§2-20-801 to 2-20-806.

CORPORATIONS.

Agriculture.

- Agricultural cooperative associations.
Application of general corporation laws, §2-2-119.
- General provisions, §§2-2-101 to 2-2-313.
- Interest in other corporation or association, §2-2-120.

Cooperative marketing associations.

- Applicability of general corporation laws, §2-2-428.
- General provisions, §§2-2-401 to 2-2-430.

COSTS.**Agricultural operations.**

- Proceeding to declare nuisance.
- Awarding court costs to prevailing party, §2-4-107.

Livestock or poultry production contracts.

- Civil action for violation, §2-32-201.

Tick control program.

- Cost-sharing, §2-40-902.

COTTON.**Boll weevil suppression and eradication, §§2-16-601 to 2-16-617.****Cooperative associations.**

- Checks.
 - Signatures of person on check, §2-2-201.
- Contracts.
 - Membership contracts, §2-2-201.
- Merger and consolidation, §§2-2-301 to 2-2-313.
- Signatures.
 - Draft or check, §2-2-201.
- Violations.
 - Each violation deemed separate offense, §2-2-202.
 - Penalties, §2-2-202.

Definitions.

- Public cotton gin, §2-20-201.

Fines.

- Gins.
 - Refusing to gin cotton, §2-20-204.

Gins.

- Fines.
 - Refusal to gin cotton, §2-20-204.
- Method of ginning, §2-20-203.
- Order in ginning, §2-20-202.
- Payment, §2-20-203.
- Penalties.
 - Failure to keep or permit inspection of records, §2-20-206.
- Price, §2-20-203.
- Public cotton gin.
 - Defined, §2-20-201.
- Records.
 - Failure to keep or exhibit books, §2-20-208.
 - Failure to keep or permit inspection.
 - Penalty, §2-20-206.
 - Ginners required to keep records of all seed cotton purchased, §2-20-205.
 - Weights, §2-20-207.
- Refusing to gin cotton.
 - Penalties, §2-20-204.
- Seeds.
 - Disposition, §2-20-203.

COTTON —Cont'd**Insecticides.**

- Date stamped on cotton insecticides, §2-16-102.

Inspections.

- Gins.
 - Failure to permit inspection of records.
 - Penalty, §2-20-206.

Penalties.

- Failure to keep records, §2-20-206.

Pesticides.

- Date of manufacture stamped on cotton insecticides, §2-16-102.

Public cotton gin.

- Defined, §2-20-201.

Records.

- Ginners.
 - Seed cotton purchased, §2-20-205.

Seeds.

- Cotton gins.
 - Disposition of seeds, §2-20-203.

Weights and measures.

- Gins.
 - Failure to keep or exhibit books, §2-20-208.
 - Record of weights required, §2-20-207.

COTTON GINS, §§2-20-201 to 2-20-208.**COUNTERFEITING.****Boll weevil suppression eradication.**

- Certificates, permits or other documents provided in subchapter.
- Misdemeanor, §2-16-604.

COUNTIES.**Brucellosis.**

- Modified certified brucellosis free areas.
 - Action to qualify county as certified area, §2-40-602.

Livestock.

- Impoundment of animals running at large.
 - Daily charges, §2-38-408.
 - Enclosure provided by county, §2-38-403.
- Running at large.
 - Impoundment of animals running at large.
 - Daily charges, §2-38-408.
 - Enclosure provided by county, §2-38-403.
- Stray-pens.
 - Providing by county, §2-38-114.
- Unclaimed estrays.
 - Payment to county, §2-38-121.

COUNTIES —Cont'd**Livestock shows.**

Adjoining counties.

Joint fair and livestock shows,
§2-36-303.

Division of funds among counties and
districts, §2-36-204.

Joint fair and livestock shows.

Allocation and use of funds,
§2-36-303.

Grading, §2-36-303.

Nonresident landowners.

Eligibility to participate in county
show, §2-36-304.

Tick control.

Agricultural extension service.

Assistance in receiving and
processing applications,
§2-40-903.

COUNTY JUDGES.**Fire ant poison cost sharing
program.**

Responsibility for chemicals,
§2-16-105.

CREMATION.**Dead animals.**

Fowl, §§2-40-401 to 2-40-406.

General provisions, §§2-40-301 to
2-40-303.

CRIMINAL LAW AND PROCEDURE.**Agricultural cooperative
associations, §2-2-202.**

Breach of contract, §2-2-118.

Agriculture.

Processing, grading, labeling and
marketing, §§2-20-103, 2-20-403.

Beef.

Marketing, sale and transportation,
§2-35-302.

**Boll weevil suppression and
eradication.**

Criminal penalties, §2-16-604.

Brucellosis, §2-40-210.**Canine brucellosis, §2-40-110.****Catfish promotion assessment.**

Noncompliance, §2-9-111.

**Cattle quarantine lines, §§2-40-1001,
2-40-1002.**

Transportation or drifting of cattle
across lines, §2-40-1004.

**Commercial bait and ornamental
fish act.**

Unlawful acts, §2-5-207.

Commercial feeds, §2-37-113.**Control of contagious diseases,
§2-40-101.**

Equine infectious anemia, §2-40-802.

CRIMINAL LAW AND PROCEDURE

—Cont'd

Cooperative marketing associations.

Breach of contract, false reports,
spreading, §2-2-420.

Cotton.

Insecticide or poison.

Date stamps on bags, §2-16-102.

Crops.

Damage or destruction of field crop
products, §2-15-101.

**Damage or destruction of field crop
products, §2-15-101.****Equine infectious anemia, §2-40-802.****Fertilizers.**

Sales in violation of act, §2-19-201.

Hogs.

Cholera.

Violations of provisions, §2-40-702.

Release feral hogs into the wild,
§2-38-504.

Irrigation discharges.

Discharge of center pivot irrigation
water onto highways, §2-1-101.

Liming materials.

Violations of act, §2-19-302.

Livestock.

Brands and marks.

Duplication, §2-34-202.

Interstate movement in violation of
regulations, §2-33-110.

Marketing, sale and transportation,
§2-35-203.

Filing and acknowledgment of
record, §2-35-208.

Transportation or sales, §2-35-203.

Nurseries.

Agriculture, §2-21-104.

Plant disease and pest control,

§§2-16-203, 2-16-404.

Johnson grass, §2-16-503.

Prosecution, §2-16-304.

**Processing, grading, labeling and
marketing, §2-20-103.**

Fruit and vegetable labeling,
§2-20-305.

Refusing to gin cotton, §2-20-204.

Rice promotion, §2-20-504.

Wheat promotion, §2-20-603.

Seeds, §2-18-102.**Soybeans.**

Promotion.

Inspection of premises.

Refusal by persons required to pay
assessment, §2-20-403.

Warehousing of grain, §2-17-204.**CROPS.****Damage or destruction of field crop
products, §2-15-101.**

CROPS —Cont'd**Irrigation companies.**

Discharge of center pivot irrigation water onto highways, §2-1-101.

D**DAIRY COMMITTEE, §2-33-401.****DAMAGES.****Agricultural cooperative associations.**

Liquidated damages.

Remedies for breach of contract, §2-2-117.

Agriculture.

Grading of products and containers.

Deputy inspectors and employees.

Persons injured by may sue on bond, §2-20-110.

Catfish processor fair practices.

Unlawful practices, §2-6-106.

Cooperative marketing associations.

Breach of marketing contract.

Fixing liquidated damages, §2-2-419.

Fences.

Breaking through lawful fences, §2-39-108.

Injuring animals when fence insufficient, §2-39-110.

Liability for willfully damaging fence or gate of another, §2-39-111.

Owner's liability for damage done by escaped livestock, §2-39-109.

Johnson grass.

Civil actions by landowners, §2-16-508.

Livestock.

Running at large.

Liability for damage to crops, §2-38-301.

Plant disease and pest control.

Civil penalties, §2-16-203.

Seeds.

Arbitration of defective seed claims.

Arbitration committee.

Recommendation of money damages, §2-23-105.

DEALERS.**Ginseng.**

Licenses, §2-20-704.

Fee, §2-20-704.

DEBTS.**Agricultural cooperative associations.**

Liability of members for debts of association, §2-2-114.

DEBTS —Cont'd**Cooperative marketing associations.**

Liability of members for debts of association, §2-2-417.

DEFINED TERMS.

Abandoned apiary, §2-21-101.

Accredited veterinarian.

Equine infectious anemia, §2-40-801.

Action.

Farm mediation, §2-7-102.

Active ingredient.

Pesticide control, §2-16-403.

Soil amendments, §2-19-402.

Adjacent herds.

Equine infectious anemia, §2-40-801.

Adulterated.

Pesticide control, §2-16-403.

Soil amendments, §2-19-402.

Advanced biofuels.

Agriculture cooperative associations, §2-8-102.

Advanced biofuels facilities.

Agriculture cooperative associations, §2-8-102.

Advertisement.

Arbitration of defect seed claims, §2-23-101.

Affected herd.

Equine infectious anemia, §2-40-801.

Agent.

Nursery fraud, §2-21-102.

Agricultural land.

Foreign investment, §2-3-102.

Agricultural operation.

Agricultural nuisances, §2-4-102.

Agricultural products.

Cooperative associations, §2-2-102.

Grading, §2-20-102.

Marketing associations, §2-2-403.

Agricultural property.

Farm mediation, §2-7-102.

Agricultural pursuit.

Domestic fish farming, §2-5-101.

Agricultural seed.

Arbitration of defect seed claims, §2-23-101.

Agriculture.

Agricultural nuisances, §2-4-102.

Domestic fish farming, §2-5-101.

Animal.

Brand registry, §2-34-201.

Pesticide control, §2-16-403.

Apiary, §2-22-101.

Apiary equipment, §2-22-101.

Appliances.

Bees and apiaries, §2-22-101.

Approved incineration.

Disposal of fowl carcasses, §2-40-401.

DEFINED TERMS —Cont'd**Approved laboratory.**

Equine infectious anemia, §2-40-801.

Arbitration committee.

Arbitration of defect seed claims,
§2-23-101.

Assessment.

Boll weevil suppression or eradication,
§2-16-603.

Association.

Agricultural cooperatives, §2-2-102.
Marketing, §2-2-403.

Authorized agents.

Equine infectious anemia, §2-40-801.

Base year qualified research costs.

Biotechnology development and
training, §2-8-102.

Bee disease, §2-22-101.**Bees, §2-22-101.****Beneficial insects.**

Pesticide control, §2-16-403.

Biotechnology, §2-8-102.**Biotechnology facilities, §2-8-102.****Boll weevil.**

Suppression or eradication, §2-16-603.

Branching.

Farm mediation, §2-7-102.

Brand.

Registry, §2-34-201.

Brand name.

Commercial feeds, §2-37-103.

Bulk.

Soil amendments, §2-19-402.

Buyer.

Arbitration of defect seed claims,
§2-23-101.

Capable of use as human food.

Catfish processor fair practices,
§2-6-103.

Cash sale.

Catfish processor fair practices,
§2-6-103.

Catfish.

Processor fair practices, §2-6-103.

Catfish industry.

Arkansas catfish promotion board,
§2-9-102.

Certificate.

Boll weevil suppression or eradication,
§2-16-603.

Certificate of veterinary inspection.

Equine infectious anemia, §2-40-801.

Certified EIA verifier, §2-40-801.**Chairperson.**

Arbitration of defect seed claims,
§2-23-101.

Characteristics of commercial impact.

Rice certification act, §2-15-202.

DEFINED TERMS —Cont'd**Class A registrant.**

Catfish processor fair practices,
§2-6-103.

Closed package.

Labeling of fruits and vegetables,
§2-20-302.

Colony.

Bees and apiaries, §2-22-101.

Combination.

Labeling of fruits and vegetables,
§2-20-302.

Commercial catfish producer.

Catfish promotion board, §2-9-102.

Commercial feed, §2-37-103.**Concentration point.**

Equine infectious anemia, §2-40-801.

Contract feeder.

Commercial feeds, §2-37-103.

Contractor.

Livestock or poultry production
contracts, §2-32-201.

Costs.

Biotechnology development and
training, §2-8-102.

Cotton.

Boll weevil suppression or eradication,
§2-16-603.

Cotton grower.

Boll weevil suppression or eradication,
§2-16-603.

Creditor.

Farm mediation, §2-7-102.

Credit year.

Biotechnology development and
training, §2-8-102.

Culls.

Labeling of fruits and vegetables,
§2-20-302.

Cultivated crop.

Domestic fish farming, §2-5-101.

Customer-formula feed, §2-37-103.**Dangerous insect pest and plant diseases.**

Emergency plant act, §2-16-302.

Dealer.

Arbitration of defect seed claims,
§2-23-101.

Nursery fraud, §2-21-102.

Defoliant.

Pesticide control, §2-16-403.

Desiccant.

Pesticide control, §2-16-403.

Designated epidemiologist.

Equine infectious anemia, §2-40-801.

Device.

Pesticide control, §2-16-403.

DEFINED TERMS —Cont'd**Direct retail sale.**

Catfish processor fair practices,
§2-6-103.

Distribute.

Commercial feeds, §2-37-103.
Pesticide control, §2-16-403.
Soil amendments, §2-19-402.

Distributor.

Commercial feeds, §2-37-103.
Soil amendments, §2-19-402.

Domesticated fish.

Farming, §2-5-102.

Drug.

Commercial feeds, §2-37-103.

EIA, §2-40-801.**EIAV, §2-40-801.****Eminent hazard.**

Pesticide control, §2-16-403.

Environment.

Pesticide control, §2-16-403.

Epidemiologist investigation.

Equine infectious anemia, §2-40-801.

Equidae.

Equine infectious anemia, §2-40-801.

Equine activity.

Equine infectious anemia, §2-40-801.

Equine infectious anemia, §2-40-801.**Exposed equidae.**

Equine infectious anemia, §2-40-801.

Farmer.

Mediation, §2-7-102.

Farming.

Mediation, §2-7-102.

Farming operation.

Agricultural nuisances, §2-4-102.

Feed dealer.

Catfish promotion board, §2-9-102.

Feed ingredient, §2-37-103.**Feed seller.**

Catfish promotion board, §2-9-102.

Fence, §2-39-102.**Feral hogs, §2-38-501.****Finance lease.**

Biotechnology development and
training, §2-8-102.

Foreign government.

Agricultural investments, §2-3-102.

Foreign party.

Agricultural foreign investments,
§2-3-102.

Fowl carcasses.

Disposal, §2-40-401.

Fungus.

Pesticide control, §2-16-403.

Grain.

Public warehouses, §2-17-202.
Title in public warehouses, §2-17-301.

DEFINED TERMS —Cont'd**Grower.**

Livestock or poultry production
contracts, §2-32-201.

Herd.

Equine infectious anemia, §2-40-801.

Higher education partnerships.

Agriculture cooperative associations,
§2-8-102.

Biotechnology development and
training, §2-8-102.

Highly toxic pesticide.

Control, §2-16-403.

Hive.

Bees and apiaries, §2-22-101.

Hog cholera virus, §2-40-701.**Host.**

Boll weevil suppression or eradication,
§2-16-603.

Inert ingredient.

Pesticide control, §2-16-403.
Soil amendments, §2-19-402.

Infested.

Boll weevil suppression or eradication,
§2-16-603.

Ingredient statement.

Pesticide control, §2-16-403.

Insect.

Pesticide control, §2-16-403.

Integrated operator.

Commercial feeds, §2-37-103.

Intellectual property.

Biotechnology development and
training, §2-8-102.

Label.

Arbitration of defect seed claims,
§2-23-101.

Commercial feeds, §2-37-103.

Pesticide control, §2-16-403.

Soil amendments, §2-19-402.

Labeler.

Arbitration of defect seed claims,
§2-23-101.

Labeling.

Arbitration of defect seed claims,
§2-23-101.

Commercial feeds, §2-37-103.

Pesticide control, §2-16-403.

Soil amendments, §2-19-402.

Large animal.

Disposal of carcass, §2-40-1301.

Large animal carcasses.

Disposal, §2-40-1301.

License.

Public warehouse receivership,
§2-17-401.

Liming material.

Labeling, §2-19-303.

DEFINED TERMS —Cont'd**Livestock.**

Brand registry, §2-34-201.

Domestic fish farming, §2-5-101.

Livestock dealer.

Equine infectious anemia, §2-40-801.

Local legislation.

Fertilizers, §2-19-212.

Manufacture.

Commercial feeds, §2-37-103.

Manufacturer.

Soil amendments, §2-19-402.

Material risk.

Livestock or poultry production contracts, §2-32-201.

Mediation.

Farming, §2-7-102.

Member.

Agricultural cooperative associations, §2-2-102.

Marketing associations, §2-2-403.

Mineral feed, §2-37-103.**Misbranded.**

Soil amendments, §2-19-402.

Name.

Soil amendments, §2-19-402.

Negative current EIA test, §2-40-801.**Neighboring herd.**

Equine infectious anemia, §2-40-801.

Nematode.

Pesticide control, §2-16-403.

Net market price.

Soybean promotion, §2-20-402.

Nucleus.

Bees and apiaries, §2-22-101.

Nursery.

Fraud, §2-21-102.

Nursery man.

Fraud, §2-21-102.

Nursery stock.

Fraud, §2-21-102.

Official EIA test, §2-40-801.**Official sample.**

Commercial feeds, §2-37-103.

One hundred percent natural organic fertilizer, §2-19-501.**Owner.**

Catfish processor fair practices, §2-6-103.

Title to grain in public warehouses, §2-17-301.

Package.

Bees and apiaries, §2-22-101.

Participant.

Equine infectious anemia, §2-40-801.

Party.

Agricultural foreign investments, §2-3-102.

DEFINED TERMS —Cont'd**Party —Cont'd**

Farm mediation, §2-7-102.

Percent.

Commercial feeds, §2-37-103.

Soil amendments, §2-19-402.

Percentage.

Soil amendments, §2-19-402.

Permit.

Boll weevil suppression or eradication, §2-16-603.

Equine infectious anemia, §2-40-801.

Person.

Agricultural cooperative association, §2-2-102.

Agricultural product grading, §2-20-102.

Arbitration of defect seed claims, §2-23-101.

Boll weevil, §2-16-603.

Catfish processor fair practices, §2-6-103.

Commercial bait and ornamental fish act, §2-5-203.

Commercial feeds, §2-37-103.

Fruit and vegetable labeling, §2-20-302.

Marketing associations, §2-2-403.

Nursery fraud, §2-21-102.

Pesticide control, §2-16-403.

Public grain warehouses, §2-17-202.

Rice certification act, §2-15-202.

Seeds, §2-18-101.

Soil ingredients, §2-19-402.

Suppression or eradication, §2-16-603.

Pesticide.

Control, §2-16-403.

Pests.

Pesticide control, §2-16-403.

Pet.

Commercial feeds, §2-37-103.

Pet food, §2-37-103.**Places.**

Agricultural product grading, §2-20-102.

Fruit and vegetable labeling, §2-20-302.

Plant regulators.

Pesticide control, §2-16-403.

Political subdivisions.

Fertilizers, §2-19-212.

Pollination.

Bees and apiaries, §2-22-101.

Processor.

Catfish fair practices, §2-6-103.

Catfish promotion board, §2-9-102.

Producer.

Catfish fair practices, §2-6-103.

DEFINED TERMS —Cont'd**Product.**

Catfish processor fair practices,
§2-6-103.

Production.

Livestock or poultry production
contracts, §2-32-201.

Production contract.

Livestock or poultry production
contracts, §2-32-201.

Product name.

Commercial feeds, §2-37-103.

Protect health and environment.

Pesticide control, §2-16-403.

Public grain warehouse, §2-17-202.**Public grain warehouseman,
§2-17-202.**

Grain title, §2-17-301.

Purchase.

Biotechnology development and
training, §2-8-102.

Qualified research.

Biotechnology development and
training, §2-8-102.

Quantity statement.

Commercial feeds, §2-37-103.

Quarantine.

Equine infectious anemia, §2-40-801.

Quarantined holding facility.

Equine infectious anemia, §2-40-801.

Reactor.

Equine infectious anemia, §2-40-801.

Registrant.

Pesticide control, §2-16-403.

Soil amendments, §2-19-402.

Regulated article.

Boll weevil suppression or eradication,
§2-16-603.

Regulatory veterinarian.

Equine infectious anemia, §2-40-801.

Research facility.

Equine infectious anemia, §2-40-801.

Responsible person.

Disposal of fowl carcasses, §2-40-401.

Restricted-use pesticide.

Control, §2-16-403.

Ripes.

Labeling of fruits and vegetables,
§2-20-302.

Secured party.

Catfish processor fair practices,
§2-6-103.

Seed, §2-18-101.**Seller.**

Catfish promotion board, §2-9-102.

Soil amendments, §2-19-402.**Specialty fertilizer.**

Registration, §2-19-202.

DEFINED TERMS —Cont'd**Specialty pet.**

Commercial feeds, §2-37-103.

Specialty pet food, §2-37-103.**Spray adjuvant.**

Pesticide control, §2-16-403.

State plant board.

Boll weevil suppression or eradication,
§2-16-603.

State restricted-use pesticide.

Control, §2-16-403.

Stored grain.

Public warehouses, §2-17-202.

Ton.

Commercial feeds, §2-37-103.

Training.

Agriculture cooperative associations,
§2-8-102.

Biotechnology development and
training, §2-8-102.

Turf, §2-16-109.**Ungraded.**

Labeling of fruits and vegetables,
§2-20-302.

**Unreasonable adverse effects on the
environment.**

Pesticide control, §2-16-403.

Utility.

Labeling of fruits and vegetables,
§2-20-302.

Warehouse.

Receivership of public warehouses,
§2-17-401.

Warehouse receipt.

Public grain warehouses, §2-17-202.

Weed.

Pesticide control, §2-16-403.

Wildlife.

Pesticide control, §2-16-403.

DEPOSITS.**Livestock and poultry commission.**

Fees, revenues, fines and penalties,
§2-33-113.

Soybeans.

Promotion assessment, §2-20-406.

DISEASES.**Animals.**

Bringing in diseased animal,
§2-40-101.

Expenses of enforcement of act,
§2-40-107.

Horses.

Equine infectious anemia,
§§2-40-801 to 2-40-829.

Owners of diseased animals.

Duties, §2-40-104.

DISEASES —Cont'd**Bees and honey.**

Defined, §2-22-101.

Duties of persons engaged in
beekeeping upon detection of
disease, §2-22-109.

Quarantine, §2-22-112.

Cats.Bringing in diseased animal,
§2-40-101.

Duties of owner, §2-40-104.

**Commercial bait and ornamental
fish act, §§2-5-201 to 2-5-208.****Dogs.**Bringing in diseased animal,
§2-40-101.Owners of diseased animals,
§2-40-104.**Equine infectious anemia, §§2-40-801
to 2-40-829.****Horses.**Equine infectious anemia, §§2-40-801
to 2-40-829.**Quarantine.**

Cattle, §§2-40-1001 to 2-40-1006.

DIVISION FENCES.**Maintenance, §2-39-105.****DOGS.****Commercial feeds, §§2-37-101 to
2-37-114.****Diagnostic testing.**Small animal diagnostic testing,
§2-33-112.**Diseases.**Bringing in diseased animal,
§2-40-101.Owners of diseased animals,
§2-40-104.**Feeds.**Commercial feeds, §§2-37-101 to
2-37-114.**Small animal diagnostic testing,
§2-33-112.****DOLOMITE.****Agricultural liming materials,
§§2-19-301 to 2-19-308.****DROVERS.****General provisions, §§2-34-301 to
2-34-304.****ELECTIONS.****Catfish promotion board.**

Voter referendum.

Levy assessment, §2-9-107.

Qualifications of voters, §2-9-106.

Cattle.

Beef council.

Election on levy of assessment on
cattle, §2-35-304.**Wheat promotion act.**

Referendum in each county, §2-20-605.

EQUINE INFECTIOUS ANEMIA.**General provisions, §§2-40-801 to
2-40-829.****ESTRAYS.****Feral hogs, §2-38-504.****Horses.**

Compensation for keeping, §2-38-117.

Livestock.Estrays and running at large,
§§2-38-101 to 2-38-504.**Mules.**

Compensation for keeping, §2-38-117.

EVIDENCE.**Agriculture.**

Grading of products and containers.

Certificates prima facie evidence of
grade, §2-20-115.**Livestock.**

Brands and marks.

State brand book.

Prima facie evidence of ownership,
§2-34-211.**Seeds.**

Arbitration of defective seed claims.

Arbitration committee.

Investigation and report.

Findings as evidence, §2-23-107.

EXECUTIONS.**Livestock.**

Running at large.

Delinquency in payment by
taker-up, §2-38-121.**EXPLOSIONS AND EXPLOSIVES.****Grain.**

Public grain warehouses.

Insurance against loss of grain due
to disaster, §2-17-218.**F****E****ECONOMIC DEVELOPMENT.****Catfish promotion board, §§2-9-101 to
2-9-112.****FAIRS.****North Central Arkansas district fair
and livestock show, §2-36-306.****Northeast Arkansas district fair
advisory board, §2-36-302.**

FAIRS —Cont'd**Sales.**

Immoral, lewd, etc., items, §2-36-103.

FARM MEDIATION, §§2-7-101 to 2-7-310.**FARM PRODUCTS.****Agricultural cooperative**

associations, §§2-2-101 to 2-2-313.

Cooperative marketing associations, §§2-2-401 to 2-2-430.**Damage or destruction of field crop products, §2-15-101.****Rice research and promotion act.**

General provisions, §§2-20-501 to 2-20-510.

Wheat promotion act.

General provisions, §§2-20-601 to 2-20-610.

FARM RAISED BAIT AND

ORNAMENTAL FISH, §§2-5-201 to 2-5-208.

Certification.

Display only by person certified, §2-5-205.

Establishment of voluntary certification program.

Purpose of subchapter, §2-5-202.

Fees.

Board may prescribe, deposit, §2-5-206.

Issuance to person meeting standards and qualifications, §2-5-205.

Revocation of certificate, §2-5-207.

Unlawful acts, §2-5-207.

Commercial bait and ornamental fish act.

Subchapter known and cited as, §2-5-201.

Commercial bait and ornamental fish fund.

Deposit of fees, §2-5-206.

Definitions, §2-5-203.**Deputies to implement provision.**

Appointment by director of state plant board.

Authorization, §2-5-204.

Fees.

Board may prescribe, deposit, §2-5-206.

Intergovernmental cooperation, §2-5-208.**Powers and duties of state plant board, §2-5-204.****Purpose of subchapter, §2-5-202.****Unlawful acts, penalty, §2-5-207.****FARMS AND FARMERS.**

Farm mediation, §§2-7-101 to 2-7-310.

FARMS AND FARMERS —Cont'd**Fishing.**

Farm raised bait and ornamental fish, §§2-5-201 to 2-5-208.

Wheat promotion act.

General provisions, §§2-20-601 to 2-20-610.

Young and beginning farmer advisory board, §§2-1-201 to 2-1-206.**FEEDS.****Commercial feeds, §§2-37-101 to 2-37-114.****FEES.****Agricultural cooperative associations.**

Annual license fee.

Payment to secretary of state, §2-2-123.

Filing fees, §2-2-124.

Existing entities, §2-2-121.

Animals.

Small animal diagnostic testing, §2-33-112.

Brucellosis.

Vaccination.

Funding of brucellosis program, §2-40-206.

Catfish processor fair practices.

Registration, §2-6-105.

Cattle.

Rabies.

Pseudorabies control and eradication program.

Levy of fees to fund, §2-40-1201.

Commercial feeds.

Inspection fees, §2-37-114.

Cooperative marketing associations.

Amendments to articles, §2-2-410.

Filing fees, §2-2-410.

Existing associations, §2-2-425.

Fertilizers.

Brand registration and facility licensing fees, §2-19-202.

Natural organic fertilizers.

Setting and collecting, §2-19-502.

Ginseng.

Artificial propagation fee, §2-20-705.

Dealers.

Licenses, §2-20-704.

Grain.

Public warehouses.

Licenses, §2-17-213.

Liming materials.

Registration fee, §2-19-306.

Vendors' licenses, §2-19-306.

FEES —Cont'd**Livestock, §2-40-1201.**

Diagnostic testing, §2-33-111.

Disposition of funds, §2-40-1201.

Rabies.

Pseudorabies control and eradication program.

Levy of fees to fund, §2-40-1201.

Livestock and poultry commission, §§2-33-113, 2-33-115.

Carcass data information, §2-33-203.

Deposit of funds received, §2-33-206.

Diagnostic testing.

Disposition of fees, §2-33-111.

Fee structure, §2-33-111.

Feeder pig and feeder calf grading program, §2-33-204.

Failure to pay, §2-33-204.

Pesticides.

Registration, §2-16-407.

Poultry.

Diagnostic testing, §2-33-111.

Seeds.

Arbitration of defective seed claims.

Complaints against dealers.

Filing fees, §2-23-102.

Investigations requested by dealers.

Filing fee, §2-23-103.

Inspection and certification and promotion and advertising, §2-18-105.

Soil amendment.

Inspection fees.

Payment by registrant, §2-19-410.

FENCES.**Animals.**

Breaking through lawful fences.

Damages recoverable, §2-39-108.

Injuring animals when fence insufficient.

Liability, §2-39-110.

Complaints.

Disinterested householders to view fence, §2-39-107.

Damages.**Animals.**

Breaking through lawful fences, §2-39-108.

Injuring animals when fence insufficient, §2-39-110.

Liability for willfully damaging fence or gate of another, §2-39-111.

Owner's liability for damage done by escaped livestock, §2-39-109.

Definitions.

Fence, defined, §2-39-102.

Disinterested householders.

Viewing fence, §2-39-107.

FENCES —Cont'd**Division fences.**

Maintenance, §2-39-105.

Injuring fence.

Liability, §2-39-111.

Insufficient fence.

Injuring animals when fence insufficient.

Liability, §2-39-110.

Liability.

Injuring fence, §2-39-111.

Willfully damaging fence or gate of another, §2-39-111.

Livestock.

Fences required for enclosures, §2-39-101.

Maintenance.

Division fences, §2-39-105.

Motor vehicles.

Escaped livestock where damaged by motor vehicle.

Owner's liability, §2-39-109.

Penalties.

Liability for willfully damaging fence or gate of another, §2-39-111.

Requirement for enclosures,

§2-39-101.

Sufficiency of fence.

How adjudged, §2-39-106.

Witnesses.

Testimony of disinterested householders, §2-39-107.

FERAL HOGS, §§2-38-501 to 2-38-504.**FERTILIZERS.****Analysis.**

Containers must show, §2-19-205.

Deficiencies.

Penalty for deficiency, §2-19-206.

Delivery to chief department chemist, §2-19-208.

Report of guaranteed analysis, §2-19-202.

Audits.

Right of plant board or agents, §2-19-209.

Blending or bulk storage facilities.

Licenses, §2-19-202.

Sale of fertilizers manufactured at unlicensed facility.

Prohibited, §2-19-203.

Bone meal.

Statement of phosphoric acid content, §2-19-202.

Brands.

Registration, §2-19-202.

Containers.

Analysis, §2-19-205.

FERTILIZERS —Cont'd**Definitions.**

- Natural organic fertilizers, §2-19-501.
- Specialty fertilizers, §2-19-202.

Exempted transactions, §2-19-204.**Fees.**

- Brand registration and facility licensing fees, §2-19-202.
- Natural organic fertilizers.
- Setting and collecting, §2-19-502.

Grades.

- Mixed formulations.
- Report on monthly basis, §2-19-202.

Inspections.

- Plant board, §2-19-209.
- Waiver.
- No protection to party selling or offering unregistered fertilizer, §2-19-203.

Licenses.

- Blending or bulk storage facilities, §2-19-202.
- Fees, §2-19-202.
- Sale of fertilizers manufactured at unlicensed facilities.
- Prohibited, §2-19-203.
- Standards and criteria.
- Promulgation by plant board, §2-19-202.

Manufacturers.

- Containers to show analysis, §2-19-205.
- Reports.
- Tonnage reports, §2-19-209.
- Unregistered fertilizers.
- Sale unlawful, §2-19-203.

Natural organic fertilizers,

- §§2-19-501 to 2-19-503.
- Definitions, §2-19-501.
- Exemptions, §2-19-503.
- Fees.
- Setting and collecting, §2-19-502.
- Guarantee of elements, §2-19-502.
- Manufacture and sale.
- Regulation and supervision by plant board, §2-19-502.
- 100% natural organic fertilizer.
- Defined, §2-19-501.
- Penalties.
- Setting and collecting, §2-19-502.
- Private sale of unprocessed animal litter.
- Exemptions, §2-19-503.
- Rules and regulations.
- Promulgation by plant board, §2-19-502.
- Unprocessed animal litter.
- Private sale.
- Exemptions, §2-19-503.

FERTILIZERS —Cont'd**Organic fertilizers.**

- Natural organic fertilizers, §§2-19-501 to 2-19-503.

Penalties.

- Audits.
- Refusal to allow, §2-19-209.
- Deficiencies, §2-19-206.
- Inspections.
- Refusal to allow, §2-19-209.
- Natural organic fertilizers.
- Setting and collecting, §2-19-502.

Plant board.

- Analysis.
- Delivery to chief department chemist, §2-19-208.
- Audits, §2-19-209.
- Inspections, §2-19-209.
- Rules and regulations.
- Established, §2-19-211.
- Samples.
- Obtaining samples, §2-19-207.
- Stop sale order, §2-19-211.

Preemption of local laws, §2-19-212.**Primary plant food.**

- Minimum units required, §2-19-202.
- Exceptions, §2-19-202.

Registration, §2-19-202.

- Approval by plant board, §2-19-202.
- Cancellation, §2-19-202.
- Expiration, §2-19-202.
- Fees, §2-19-202.
- Guaranteed analysis, §2-19-202.
- Required, §2-19-202.
- Special fertilizer grade, §2-19-202.
- Unregistered fertilizers.
- Sale prohibited, §2-19-203.

Reports.

- Grades.
- Mixed formulations reported on monthly basis, §2-19-202.
- Guaranteed analysis, §2-19-203.
- Tonnage reports, §2-19-209.

Rock phosphate.

- Statement of phosphoric acid content, §2-19-202.

Rules and regulations.

- Authority of plant board, §2-19-211.
- Natural organic fertilizers.
- Promulgation by plant board, §2-19-502.

Sales.

- Blending or bulk storage facilities.
- Sale of fertilizers manufactured at unlicensed facilities.
- Prohibited, §2-19-203.
- Exempted transactions, §2-19-204.

FERTILIZERS —Cont'd**Sales —Cont'd**

Penalties.

Selling in violation of act, §2-19-201.

Stop sale order, §2-19-211.

Unregistered fertilizers.

Sale prohibited, §2-19-203.

Sampling fertilizers.

Inspectors of plant board to obtain samples, §2-19-207.

Specialty fertilizers.

Defined, §2-19-202.

Primary plant food minimum unit requirements.

Exception, §2-19-202.

Registration, §2-19-202.

Stop sale order.

Authority of board, §2-19-211.

Superphosphates.

Exempted transactions, §2-19-204.

Tonnage reports, §2-19-209.**Violations.**

Selling or offering for sale materials in violation of act, §2-19-201.

FINANCE AND ADMINISTRATION DEPARTMENT.**Catfish promotion board.**

General provisions, §§2-9-101 to 2-9-112.

FINES.**Agricultural cooperative**

associations, §2-2-202.

Breach of contract, §2-2-118.

Agriculture.

Processing, grading, labeling and marketing, §2-20-403.

Beef.

Marketing, sale and transportation, §2-35-302.

Catfish promotion assessment.

Noncompliance, §2-9-111.

Catfish promotion board.

Assessments.

Collection and remittance violations, §2-9-112.

Commercial bait and ornamental fish act.

Unlawful acts, §2-5-207.

Commercial feeds, §2-37-113.**Control of contagious diseases, §2-40-101.**

Cattle quarantine lines, §2-40-1001.

Transportation or drifting of cattle across lines, §2-40-1004.

Cooperative marketing associations.

Breach of contract, false reports, spreading, §2-2-420.

FINES —Cont'd**Corn and grain sorghum promotion, §2-20-802.****Cotton.**

Insecticides or poisons.

Date stamped on bag, failure to comply, §2-16-102.

Hogs.

Releasing feral hogs into the wild, §2-38-504.

Irrigation discharge.

Discharge of center pivot irrigation water onto highways, §2-1-101.

Liming materials.

Violations of act, §2-19-302.

Livestock.

Disposition of, §2-33-113.

Marketing, sale and transportation.

Filing and acknowledgment of record, §2-35-208.

Nurseries.

Agriculture, §2-21-104.

Plant disease and pest control,

§§2-16-203, 2-16-404.

Johnson grass, §2-16-503.

Prosecution, §2-16-304.

Processing, grading, labeling and marketing.

Refusing to gin cotton, §2-20-204.

Rice promotion, §2-20-504.

Wheat promotion, §2-20-603.

Seeds, §2-18-102.**FIRE ANT ADVISORY BOARD.**

Chairpersons, §2-16-703.

Creation, §2-16-701.

Meetings, §2-16-703.

Members, §2-16-702.

Regulations, §2-16-704.

Reports, §2-16-705.

FIRE ANT POISON COST SHARING PROGRAM.

Creation, §2-16-105.

Quarantine costs.

Recovery, §2-16-106.

Rules and regulations, §2-16-107.

FISH AND GAME.

Catfish processor fair practices, §§2-6-101 to 2-6-107.

Catfish promotion board, §§2-9-101 to 2-9-112.

FISHING.

Commercial bait and ornamental fish act, §§2-5-201 to 2-5-208.

Farms.

Farm raised bait and ornamental fish, §§2-5-201 to 2-5-208.

FORFEITURES.**Livestock.**

Running at large.

Forfeiture to taker up, §2-38-120.

FORGERY.**Boll weevil suppression and eradication.**

Certificates, permits or other documents provided in subchapter.

Misdemeanor, §2-16-604.

FORMS.**Agriculture.**

Farm mediation, §2-7-203.

Mandatory mediation, §2-7-303.

Voluntary mediation.

Application and request forms, §2-7-301.

Catfish promotion board.

Assessments.

Refund claim form, §2-9-110.

Seeds.

Arbitration of defective seed claims.

Notice of mandatory arbitration, §2-23-102.

FRAUD.**Agriculture.**

Nursery fraud act, §§2-21-101 to 2-21-113.

Nursery fraud act, §§2-21-101 to 2-21-113.

FRUIT.

Labeling of fruits and vegetables for interstate shipment, §§2-20-301 to 2-20-310.

FUNDS.**Animals.**

Small animal diagnostic testing, §2-33-112.

Arkansas catfish promotion fund, §2-9-112.

Brand registry fund.

Created, §2-34-213.

Cattle.

Beef council fund.

Creation of fund, §2-35-308.

Use of funds to enhance cattle industry, §2-35-309.

Commercial bait and ornamental fish fund, §2-5-206.

Livestock.

Brand registry fund.

Created, §2-34-213.

Federal Arkansas livestock and poultry fund.

Creation, §2-33-114.

FUNDS —Cont'd**Livestock —Cont'd**

Federal Arkansas livestock and poultry fund —Cont'd

Transfer of funds from livestock and poultry equine infectious

anemia control fund, §2-33-116.

Livestock marketing fund, §2-33-206.

Livestock spraying program fund, §2-33-208.

Livestock and poultry commission.

Livestock and poultry special revenue fund.

Established, §2-33-112.

Plant board fund.

Fire ant poison chemicals.

Monies generated from sale, §2-16-105.

Grain warehousing revenues, §2-17-238.

Operations and facilities construction fund, §2-16-108.

G**GAME AND FISH.**

Catfish promotion board, §§2-9-101 to 2-9-112.

Commission.

Domestic fish farming.

Powers of commission not affected, §2-5-103.

Definitions.

Domestic fish farming, §2-5-102.

Domestic fish farming.

Agricultural pursuit.

Defined, §2-5-101.

Agriculture.

Defined, §2-5-101.

Cultivated crop.

Defined, §2-5-101.

Definitions, §§2-5-101, 2-5-102.

Domesticated fish.

Defined, §2-5-102.

Game and fish commission.

Powers not affected, §2-5-103.

Livestock.

Defined, §2-5-101.

GATES.

Willful injury or damage to gate or fence of another.

Liability, §2-39-111.

GIFTS.

Johnson grass control board.

Acceptance, §2-16-510.

GINSENG.**Artificial propagation.**

Fee, §2-20-705.

Certificate.

Exports.

Required, §2-20-702.

Dealers.

Licenses, §2-20-704.

Fee, §2-20-704.

Registration required, §2-20-702.

Exports.

Certificate.

Required, §2-20-702.

Fees.

Artificial propagation fee, §2-20-705.

Dealers.

Licenses, §2-20-704.

Harvesting season.

Establishment authorized, §2-20-702.

Licenses.

Dealers, §2-20-704.

Fee, §2-20-704.

Plant board.

Authority to regulate ginseng,
§2-20-701.

Research program.

Generally, §2-20-703.

Rules and regulations.

Promulgation by board authorized,
§2-20-702.

Regulation.

Plant board authorized to regulate,
§2-20-701.

Research program.

Generally, §2-20-703.

Rules and regulations.

Plant board.

Promulgation by board authorized,
§2-20-702.

GOATS.**Animals named in act include those
dead or alive, §2-35-201.****Brands and marks.**

General provisions, §§2-34-101 to
2-34-213.

Carriers.

Transfer record.

Receiving without copy of transfer
record, §2-35-209.

Notice.

Running at large.

Sufficiency of notice to owner,
§2-38-303.

Perjury.

Transfer records, §2-35-207.

Sales.

Bill of sale.

Required, §2-35-212.

GOATS —Cont'd**Transportation.**

Transfer record.

Acknowledgments.

Fees of person taking
acknowledgment of transfer
records, §2-35-208.

Form, §2-35-205.

Inspection, §2-35-210.

Perjury.

Applicability to records, §2-35-207.

Receiving without copy, §2-35-209.

GOVERNOR.**Agriculture.**

Emergency plant act.

Proclamation of quarantine,
§2-16-307.

Quarantine.

Emergency plant act.

Proclamation of governor, §2-16-307.

GRAIN.**Administrative procedure.**

Public grain warehouses.

Receiver for grains stored in.

Applicability of administrative
procedure act to actions of
commissioner, §2-17-408.

Assets.

Public grain warehouses.

Required assets, §2-17-217.

Bankruptcy.

Public grain warehouses.

Duty of commissioner upon
bankruptcy of warehouseman,
§2-17-236.

Commercial code.

Public grain warehouses.

Relationship to code, §2-17-203.

Definitions.

Public grain warehouses, §2-17-202.

Receivers for grain stored in public
warehouses, §2-17-401.

Title to grain stored in public
warehouses, §2-17-301.

Explosions.

Public grain warehouses.

Insurance against loss of grain due
to disaster, §2-17-218.

Hearings.

Public grain warehouses.

Denial of license, §2-17-211.

Receivers for grains stored in public
warehouses.

Hearing on petition filed by
commissioner, §2-17-404.

GRAIN —Cont'd**Insurance.**

- Public grain warehouses.
- Insurance against loss of grain due to disaster, §2-17-218.
- Required assets, §2-17-217.

Joinder.

- Receiver for grain stored in public warehouses.
- Surety joined as defendant by commissioner, §2-17-409.

Liens.

- Public grain warehouses.
- Receiver for grain stored in.
 - Distribution of grain or proceeds without regard to storage lien or charge, §2-17-412.

Newspapers.

- Public grain warehouses.
- Receiver for grains stored in public warehouse.
- Publication of appointment, §2-17-406.

Notice.

- Public grain warehouses.
- Receiver for grain stored in public warehouses.
- Notice of hearing on petition filed by commissioner, §2-17-404.
- Receiver for grain stored in public warehouses.
- Notice to holders of warehouse receipts or unpriced scale tickets, §2-17-405.

Orders.

- Receivers for grain stored in public warehouses.
- Issuance of temporary orders by court, §2-17-402.

Parties.

- Public grain warehouses.
- Receiver for grains stored in.
 - Holders of warehouse receipts or unpriced scale tickets not parties, §2-17-405.
- Surety joined as party defendant, §2-17-409.

Penalties.

- Public grain warehouses.
- Violations, §2-17-204.

Petitions.

- Receivers for grain stored in public warehouses.
- Appointment of commissioner as receiver, §2-17-402.

Plant board.

- Public grain warehouses, §2-17-205.

GRAIN —Cont'd**Publications.**

- Receiver for grains stored in public warehouses.
- Appointment of receivers, §2-17-406.

Public grain warehouses.

- Acceptance for shipment, §2-17-231.
- Applicability of act, §2-17-203.
- Assets.

- Deficiencies in net assets made up by increase in amount of bonds, §2-17-210.

- Required assets, §2-17-217.

Bankruptcy.

- Duty of commissioner upon bankruptcy of warehouseman, §2-17-236.

Bonds, surety.

- Aggregate liability of surety, §2-17-209.

- Amount, §2-17-210.

- Deficiencies in net assets.

- Increasing amount of bonds, §2-17-210.

- Posting securities in lieu of bonds, §2-17-209.

- Required, §2-17-209.

Capital stock, §2-17-217.**Commercial code.**

- Relationship, §2-17-203.

Commissioner.**Bankruptcy.**

- Duty upon bankruptcy of warehouseman, §2-17-236.

- Defined, §2-17-202.

- Examinations, §2-17-235.

- Inspections, §2-17-235.

- Scales.

- Testing scales, §2-17-235.

Condition of grain.

- Acceptance of grain adversely affecting other grain, §2-17-233.

Cooperatives.

- Declining tendered grain, §2-17-219.

Definitions, §§2-17-202, 2-17-301.**Delivery of grain.**

- Procedure in event of nondelivery, §2-17-226.

Disasters.**Insurance.**

- Loss of grain due to disaster, §2-17-218.

Discontinuance of business, §2-17-237.**Disposition of revenues, §2-17-238.****Examinations.**

- Commissioner to examine, §2-17-235.

- Costs, §2-17-235.

GRAIN —Cont'd**Public grain warehouses —Cont'd**

Fees.

Licenses.

Annual license fee, §2-17-213.

Felonies.

Issuance of receipt without license,
§2-17-204.

Financial statements.

Copies submitted with application
for license renewal, §2-17-235.

Grade of grain.

Agreements between depositors and
public grain warehouseman,
§2-17-219.

Inspections.

Commissioners, §2-17-235.

Inspectors.

Duties, §2-17-232.

Employment, §2-17-232.

Insurance.

Determining total available net
assets, §2-17-217.Loss of grain due to disaster,
§2-17-218.

Payment of claims, §2-17-218.

Licenses.

Acquisition of new or existing
warehouse, §2-17-207.

Annual fee, §2-17-213.

Applications, §2-17-207.

Bonds required, §2-17-209.

Denial, §2-17-211.

Duplicates.

Replacement of lost or destroyed
license, §2-17-216.

Failure to license, §2-17-207.

Federal licensee exceptions,
§2-17-206.Filing copies with plant board,
§2-17-206.

Financial statements.

Submitting copies with license
renewal, §2-17-235.

Fraud.

Conviction of crime involving
fraud or deceit.Suspension, cancellation or
revocation of license,
§2-17-215.

Hearings.

Denial, §2-17-211.

Issuance, §2-17-211.

Lost or destroyed license.

Replacement, §2-17-216.

Multiple warehouses in one city,
§2-17-207.

Posting, §2-17-212.

GRAIN —Cont'd**Public grain warehouses —Cont'd**

Licenses —Cont'd

Receivers, §§2-17-401, 2-17-402.

Renewal, §2-17-214.

Required, §2-17-206.

Suspension, cancellation or
revocation.

Grounds, §2-17-215.

Review, §2-17-215.

Transferability, §2-17-207.

Warehouse receipts.

Issuance of receipts without
license, §2-17-204.

Misdemeanors.

Unintentional or negligent
violations, §2-17-204.

Notice.

Discontinuance of business,
§2-17-237.

Partial delivery of grain.

Delivery of stored grain.

Return of warehouse receipt,
§2-17-228.

Procedure, §2-17-227.

Penalties.

Violations, §2-17-204.

Person.

Defined, §2-17-202.

Plant board.

Duties, §2-17-205.

Enforcement of act, §2-17-205.

Quality of grain.

Duty to maintain, §2-17-233.

Rates and charges.

Schedule of charges to be filed and
posted, §2-17-208.

Receivers.

Administrative procedure.

Applicability of administrative
procedure act, §2-17-408.

Appointment.

Publication of appointment,
§2-17-406.

Bonds, surety.

Payment into court on discharge,
§2-17-409.Right of reimbursement of
commissioner constitutes
claim against surety,
§2-17-414.Surety to be joined as party
defendant, §2-17-409.

Claims.

Failure to file timely claim,
§2-17-410.

Time for filing, §2-17-410.

GRAIN —Cont'd**Public grain warehouses —Cont'd**

Receivers —Cont'd

Commissioner.

Applicability of administrative procedure act to actions of commissioner, §2-17-408.

Defined, §2-17-401.

Delegation of commissioner's authority, §2-17-407.

Employees appearing on behalf of commissioner, §2-17-407.

Employment of merchandiser for sale of stored grain, §2-17-411.

Final report, §2-17-416.

Petition that commissioner be appointed receiver, §2-17-402.

Reimbursement of expenses, §2-17-414.

Temporary continuation of operation, §2-17-413.

Definitions, §2-17-401.

Delegation of commissioner's authority, §2-17-407.

Disposition of grain.

Plan for disposition, §2-17-403.

Distribution of grain or proceeds.

Distribution without regard to setoff, counterclaim or storage lien or charge, §2-17-412.

Expenses.

Priority of claims, §2-17-414.

Reimbursement of commissioner for expenses, §2-17-414.

Hearings.

Notice of hearing, §2-17-404.

Petitions, §2-17-404.

Licenses.

Defined, §2-17-401.

Suspension or revocation.

Petition that commissioner be appointed receiver after suspension or revocation of warehouse license, §2-17-402.

Liens.

Distribution without regard to storage lien or charge, §2-17-412.

Merchandisers.

Employment by commissioner, §2-17-411.

Qualifications, §2-17-411.

Newspapers.

Publication of appointment, §2-17-406.

GRAIN —Cont'd**Public grain warehouses —Cont'd**

Receivers —Cont'd

Notice.

Failure to receive notice.

Proceedings not invalidated, §2-17-405.

Hearing on petition, §2-17-404.

Holders of warehouse receipts or unpriced scale tickets, §2-17-405.

Persons holding warehouse receipts, §2-17-410.

Orders.

Issuance of temporary orders, §2-17-402.

Parties.

Persons referred in section not parties to action, §2-17-405.

Surety joined as party defendant, §2-17-409.

Petitions.

Appointment of commissioner as receiver, §2-17-402.

Failure to receive notice.

Proceedings not invalidated, §2-17-405.

Hearings, §2-17-404.

Notice of hearing on petition, §2-17-404.

Plan for disposition of grain to accompany petition, §2-17-403.

Plan for disposition of grain, §2-17-403.

Approval, §2-17-415.

Distribution of grain or proceeds, §2-17-412.

Execution, §2-17-415.

Submission to court, §2-17-415.

Publication of appointment, §2-17-406.

Reports.

Final report of commissioner, §2-17-416.

Sales.

Commissioner to employ merchandiser, §2-17-411.

Distribution of grain or proceeds, §2-17-412.

Service of process.

Hearing on petition.

Delay in service, §2-17-404.

Temporary continuation of business.

Authority of commissioner, §2-17-413.

Time.

Filing claims, §2-17-410.

GRAIN —Cont'd**Public grain warehouses —Cont'd**

Receivers —Cont'd

Unpriced scale tickets.

Notice to holders, §§2-17-405,
2-17-410.

Warehouse receipts.

Notice to holders, §§2-17-405,
2-17-410.

Warehouses.

Defined, §2-17-401.

Records.

Public inspection, §2-17-235.

Required, §2-17-234.

Retention, §2-17-234.

Revenues.

Disposition, §2-17-238.

Samples, §2-17-219.

Scales.

Test of scales, §2-17-235.

Schedule of charges.

Filing and posting, §2-17-208.

Short title of act, §2-17-201.

Storage of all tendered grain,
§2-17-219.

Stored grain.

Defined, §2-17-202.

Title of act, §2-17-201.

Title to grain stored in public
warehouses.

Applicability of act, §2-17-302.

Definitions, §2-17-301.

Delivery of grain.

Ownership not changed,
§2-17-303.

Owners.

Defined, §2-17-301.

Waiver of rights, §2-17-304.

Waiver of rights, §2-17-304.

Violations.

Penalties, §2-17-204.

Unintentional or negligent
violations, §2-17-204.

Warehouse receipts.

Acceptance of grain for shipment,
§2-17-231.

Commercial code.

Relationship to uniform
commercial code, §2-17-203.

Contents, §2-17-221.

Copies.

Nonnegotiable, §2-17-224.

Defined, §2-17-202.

Form, §2-17-222.

Issuance without license, §2-17-204.

Negotiability.

Copy of receipts nonnegotiable,
§2-17-224.**GRAIN —Cont'd****Public grain warehouses —Cont'd**

Warehouse receipts —Cont'd

Nondelivery of grain.

Procedure, §2-17-226.

Numbering, §2-17-223.

Partial delivery of grain.

Procedure, §2-17-227.

Period for which grain accepted,
§2-17-221.Pledges by warehouseman,
§2-17-230.Printing and distribution costs,
§2-17-222.

Quantity of grain.

Receipts to accurately reflect,
§2-17-225.

Required, §2-17-220.

Return of receipt.

Delivery of stored grain,
§2-17-228.Sale or pledge of receipts by
warehouseman, §2-17-230.

Signatures.

Verification for delivery of grain
under nonnegotiable receipts,
§2-17-229.**Records.**

Public grain warehouses.

Maintenance of records, §2-17-234.

Reports.Receiver for grain stored in public
warehouses.Final report of commissioner,
§2-17-416.**Service of process.**

Public grain warehouses.

Receiver for grains stored in.

Notice of hearing on petition filed
by commissioner.

Delay in service, §2-17-404.

Time.Receiver for grain stored in public
warehouse.

Filing claims, §2-17-410.

Venue.

Public grain warehouses.

Suspension, cancellation or
revocation of license, §2-17-215.**Warehouses.**

Misdemeanors.

Unintentional or negligent
violations, §2-17-204.**Weights and measures.**

Public grain warehouses.

Test of scales, §2-17-235.

GRASS.**Johnson grass.**

Control and eradication, §§2-16-501 to 2-16-511.

Turf grass.

Certification by board, §2-16-109.

GUARDIANS.**Cattle.**

Brands of minors owning cattle separate from guardian, §2-34-103.

Hogs.

Brands of minors owning hogs separate from guardian, §2-34-103.

H**HEALTH.****Health data clearinghouse.**

Release of health data, §2-7-304.

HEARINGS.**Brucellosis.**

Depopulation of herds, §2-40-210.

Grain.

Public grain warehouses.

Denial of license, §2-17-211.

Receivers for grains stored in public warehouses.

Hearing on petition filed by commissioner, §2-17-404.

Seeds.

Arbitration of defective seed claims.

Arbitration committee.

Informal hearing, §2-23-106.

Investigative powers, §2-23-108.

HIGHWAYS.**Irrigation.**

Discharge of center pivot irrigation water onto highways, §2-1-101.

HOGS.**Carriers.**

Transfer record.

Receiving without copy, §2-35-209.

Cholera.

Cleaning and disinfecting of premises, vehicles, etc., infected, §2-40-708.

Definitions.

Hog cholera virus, §2-40-701.

Disposal of carcasses, §2-40-707.

Penalties.

Violations of provisions, §2-40-702.

Quarantine.

Herds infected with or exposed to hog cholera, §2-40-706.

HOGS —Cont'd**Cholera —Cont'd**

Reports.

Duty to make report, §2-40-704.

Investigations, §2-40-705.

Rules and regulations, §2-40-703.

Slaughter of healthy swine exposed to cholera, §2-40-707.

Dead hogs.

Hog cholera.

Disposal of carcasses, §2-40-707.

Definitions.

Cholera.

Hog cholera virus, §2-40-701.

Feral hogs, §2-38-501.

Feeder pig and feeder calf grading program, §2-33-204.**Feral hogs, §§2-38-501 to 2-38-504.**

Animal health requirements, §2-38-503.

Definitions, §2-38-501.

Hunting, §2-38-502.

Releasing hogs into the wild, §2-38-504.

Guardians.

Brands of minors owning hogs separate from guardian, §2-34-103.

Investigations.

Cholera.

Investigation of report, §2-40-705.

Marks and brands.

General provisions, §§2-34-101 to 2-34-213.

Minors.

Brands of minors owning hogs separate from father or guardian, §2-34-103.

Motor vehicles.

Hog cholera.

Cleaning and disinfecting of vehicles infected with hog cholera, §2-40-708.

Notice.

Running at large.

Sufficiency of notice to owner, §2-38-303.

Perjury.

Transfer records, §2-35-207.

Quarantine.

Herds infected with or exposed to hog cholera, §2-40-706.

Records.

Transportation.

One county to another, §2-35-204.

Reports.

Cholera.

Duty to report, §2-40-704.

HOGS —Cont'd**Reports —Cont'd****Cholera —Cont'd**

Investigation of hog cholera report,
§2-40-705.

Rules and regulations.**Cholera.**

Livestock and poultry commission,
§2-40-703.

Running at large.

Feral hogs, §2-38-504.

Sales.**Bill of sale.**

Required, §2-35-212.

Stray domestic hogs.**Adjacent landowners.**

Notice requirements, §2-38-501.

Transportation.**One county to another.**

Records, §2-35-204.

Transfer record.

Contents, §2-35-204.

Copies filed with clerk, §2-35-208.

Filing with person taking
acknowledgment, §2-35-208.

Form, §2-35-205.

Inspection, §2-35-210.

Penalty for violations, §2-35-203.

Perjury.

Applicability to record, §2-35-207.

Receiving livestock without copy,
§2-35-209.

Verification, §2-35-206.

HONEY.**Bees and honey.**

General provisions, §§2-22-101 to
2-22-112.

HORSES.**Carriers.****Transfer record.**

Receiving without copy, §2-35-209.

Definitions.

Equine infectious anemia, §2-40-801.

Equine infectious anemia.**Approved markets.**

Movement of equidae through,
§2-40-820.

Approved slaughter facility.

Entry requirements, §2-40-825.

Change of ownership.

Testing requirements, §2-40-819.

Citizen reporting.

Suspected untested horse, §2-40-828.

Definitions, §2-40-801.**Entry into Arkansas.**

Requirements for equidae entering
Arkansas, §2-40-822.

HORSES —Cont'd**Equine infectious anemia —Cont'd****Equine activities.**

Defined, §2-40-801.

Requirements of equidae
participating in, §2-40-821.

Verification of negative test results
at events, §2-40-821.

Erroneous information, §2-40-818.

Fictitious names, §2-40-818.

Identification requirements for
equidae, §2-40-805.

Livestock and poultry commission.

Fees, §2-40-826.

Orders, §2-40-803.

Rules and regulations, §2-40-803.

Misdemeanors, §2-40-802.

Movement of equidae through
approved market, §2-40-820.

Movement of equidae within state.

Requirements, §2-40-823.

Movement of reactors and exposed
animals, §2-40-816.

Quarantine, §2-40-812.

Quarantined holding facilities.

Requirements for, §2-40-817.

Reactors, §2-40-813.

Racetracks.

Positive reactors at official
racetracks, §2-40-814.

Reactors.

Defined, §2-40-801.

Movement, §2-40-816.

Positive reactors at official
racetracks, §2-40-814.

Quarantining, §2-40-813.

Reports.

Test results, §2-40-811.

Research facilities.

Prevention of infection, §2-40-829.

Rules and regulations, §2-40-803.

Slaughter facility.

Entry requirements to approved
slaughter facility, §2-40-825.

Suspected untested horse.

Citizen reporting, §2-40-828.

Tests.

Affected herds, §2-40-815.

Approved EIA testing laboratories.

Requirement, §2-40-809.

Authority to require test, §2-40-806.

Blood samples.

Personnel authorized to collect,
§2-40-807.

Change of ownership, §2-40-819.

Classification of equidae tested,
§2-40-810.

Domiciled equidae, §2-40-804.

HORSES —Cont'd**Equine infectious anemia —Cont'd****Tests —Cont'd**

Entry into Arkansas.

Requirements for equidae entering
Arkansas, §2-40-822.

Movement of equidae within state.

Requirements, §2-40-823.

Reporting of results, §2-40-811.

Submission of sample and test
charts, §2-40-808.Verification of negative test results at
events, §2-40-821.

Veterinarian's clinic.

Entry requirements for care and
treatment, §2-40-824.**Equine monitoring through
identification chips, §2-32-301.****Estrays.**

Compensation for keeping, §2-38-117.

Fences.General provisions, §§2-39-101 to
2-39-111.**Perjury.**

Transfer records, §2-35-207.

Quarantine.

Equine infectious anemia, §2-40-812.

Quarantined holding facilities.

Requirements for, §2-40-817.

Reactors, §2-40-813.

Records..

Transportation.

One county to another, §2-35-204.

Reports.

Equine infectious anemia.

Test results, §2-40-811.

Rules and regulations.

Equine infectious anemia, §2-40-803.

Stallions.

Right to kill stallions and jacks.

Notice, §2-38-203.

Running at large.

Right of person taking up,
§2-38-202.**Transportation.**

One county to another.

Records, §2-35-204.

Transfer records.

Acknowledgments.

Fees of persons taking
acknowledgment on record,
§2-35-208.Animals' names in act include those
dead or alive, §2-35-201.

Contents, §2-35-204.

Copy filed with county clerk,
§2-35-208.**HORSES —Cont'd****Transportation —Cont'd****Transfer records —Cont'd**Filing with person taking
acknowledgments, §2-35-208.

Form, §2-35-205.

Inspection, §2-35-210.

Penalties for violations, §2-35-203.

Perjury.

Applicability to records, §2-35-207.

Receiving without copy of record,
§2-35-209.

Verification, §2-35-206.

HUNTING.**Feral hogs, §2-38-502.**

Revoked licenses, §2-38-502.

I**IMMUNITY.****Fences.**Damaging fence or gate of another,
§2-39-111.**IMPOUNDMENT.****Cattle.**

Quarantine.

Impounding stock across quarantine
line, §2-40-1005.**INCOME TAX.****Agriculture.**Biotechnology development and
training.

Tax credits, §§2-8-103 to 2-8-108.

**Biotechnology development and
training.**

Tax credits, §§2-8-103 to 2-8-108.

Credits.

Agriculture.

Biotechnology development and
training, §§2-8-103 to 2-8-108.Biotechnology development and
training, §§2-8-103 to 2-8-108.**INITIATIVE AND REFERENDUM.****Boll weevil suppression and
eradication.**Assessment levied upon cotton
growers.

Referendum, §2-16-614.

Conduct, §2-16-615.

Subsequent referendums,
§2-16-616.**Soybeans.**

Promotion.

Assessments, §2-20-406.

INJUNCTIONS.**Boll weevil suppression and eradication.**

Destruction of cotton.

Failure to pay assessments.

Cotton not destroyed, §2-16-617.

Catfish processor fair practices,
§2-6-106.**Cooperative marketing associations.**Breach of marketing contract,
§2-2-419.**Corn and grain sorghum promotion,**
§2-20-802.**Johnson grass.**Duty of prosecuting attorney to enjoin
nuisance, §2-16-508.

Landowners.

Authority to bring civil action for
injunction, §2-16-508.**Livestock or poultry production
contracts.**

Violations, §2-32-201.

Rice certification act.

Relief authorized, §2-15-206.

Soil amendment.

Violations of provisions, §2-19-413.

Soybeans.

Promotion.

Persons owing assessments or
penalties.Enjoining from operating
business, §2-20-403.**INSPECTIONS.****Agriculture.**

Emergency plant act.

Rights of inspection, §2-16-306.

Fees.

Board may require payment,
§2-16-209.Fruits and vegetables for interstate
shipment, §2-20-310.Sale, shipment or disposal of plants or
products.Certificate of inspection required,
§2-16-210.**Bees and honey.**

Apiaries, §2-22-107.

Powers of inspectors, §2-22-106.

Standards for inspectors, §2-22-108.

**Boll weevil suppression and
eradication.**

Authority of plant board, §2-16-607.

Cotton growers' organizations.

Books and records, §2-16-612.

Cattle.

Beef council.

Inspection of records and
regulations, §2-35-307.**INSPECTIONS —Cont'd****Commercial feeds, §2-37-111.**

Fees, §2-37-109.

Cotton.

Gins.

Failure to permit inspection of
records.

Penalty, §2-20-206.

Fertilizers.

Plant board, §2-19-209.

Waiver.

No protection to party selling or
offering unregistered fertilizer,
§2-19-203.**Johnson grass.**

Eradication supervisor, §2-16-506.

Liming materials.

Authority of plant board, §2-19-307.

Pest control.

Fees, §2-16-209.

Sale, shipment or disposal of plants or
products.Certificate of inspection required,
§2-16-210.**Pesticides.**

Plant board, §2-16-406.

Right of entry of plant board,
§2-16-412.**Seeds.**

Certificates of inspection, §2-18-106.

Fees, §2-18-105.

Soil amendment.

Authorized, §2-19-405.

Fees.

Payment to plant board, §2-19-410.

Soybeans.

Promotion.

Books and records, §2-20-407.

Refusal to allow full inspection of
premises.

Misdemeanor, §2-20-403.

INSURANCE.**Grain.**

Public grain warehouses.

Insurance against loss of grain due
to disaster, §2-17-218.

Required assets, §2-17-217.

INTERSTATE COMMERCE.**Cattle.**Federal regulations exclusively govern
interstate movement, §2-35-214.

Interstate shipping points, §2-35-215.

Fruits and vegetables.Labeling for interstate shipment,
§§2-20-301 to 2-20-310.**Livestock and poultry commission.**Cooperation with federal and state
agencies, §2-33-305.

INTERSTATE COMMERCE —Cont'd
Livestock and poultry commission
 —Cont'd

Movement of livestock or poultry in violation of regulations.
 Misdemeanor, §2-33-110.

INVESTIGATIONS.

Hogs.

Cholera.
 Investigation of report, §2-40-705.

Livestock and poultry commission.

Hog cholera.
 Investigation of report, §2-40-705.

Seeds.

Arbitration of defective seed claims.
 Arbitration committee, §2-23-107.
 Powers, §2-23-108.
 Requests by dealers, §2-23-103.
 Filing fee, §2-23-103.
 Plant board, §2-18-103.

INVESTMENTS.

Agricultural cooperative associations.

Reserves.
 Power to establish and invest, §2-2-106.

Cooperative marketing associations.

Reserves.
 Power to establish and invest, §2-2-406.

IRRIGATION.

Discharge of center pivot irrigation water onto highways, §2-1-101.

J

JOHNSON GRASS.

Citation of act, §2-16-501.

Control board.

Acceptance of gifts, grants and donations, §2-16-510.
 Appointment, §2-16-505.
 Composition, §2-16-505.
 Duties, §2-16-505.

Custodian of lands.

Duties, §2-16-509.

Damages.

Civil actions by landowners, §2-16-508.

Districts.

Abolition, §2-16-511.
 Act applicable in areas established as districts, §2-16-502.
 Powers and duties, §2-16-506.
 Vote against establishment, §2-16-505.

Elections.

Abolition of districts, §2-16-511.

JOHNSON GRASS —Cont'd
Elections —Cont'd

Ballots, §2-16-505.

Districts.

Vote against establishment of district, §2-16-505.

Qualifications of electors, §2-16-505.

Qualified voters, §2-16-505.

Results, §2-16-505.

Submission of question to electors, §2-16-504.

Enforcement.

Act applicable in areas established as districts, §2-16-502.

Eradication supervisor.

Inspections, §2-16-506.
 Powers and duties, §2-16-506.
 Selecting and employing, §2-16-505.

Failure to control or eradicate.

Penalty, §2-16-503.

Gifts.

Acceptance by control board authorized, §2-16-510.

Injunctions.

Duty of prosecuting attorney to enjoin nuisance, §2-16-508.

Landowners.

Authority to bring civil action for injunction, §2-16-508.

Inspections.

Eradication supervisor, §2-16-506.

Nuisances.

Declared public nuisance, §2-16-508.
 Injunctions, §2-16-508.

Owners.

Duty of owner, §2-16-509.

Petitions.

Submission to electors, §2-16-504.

Plant board.

Director.

Cooperation authorized, §2-16-507.

Refusal to control or eradicate.

Penalty, §2-16-503.

Title of act, §2-16-501.

Townships.

Enforcement districts, §2-16-502.

JOINDER.

Grain.

Receiver for grain stored in public warehouses.

Surety joined as defendant by commissioner, §2-17-409.

JUDGMENTS.

Livestock.

Running at large.
 Costs, §2-38-122.

JUDGMENTS —Cont'd**Livestock —Cont'd**

- Running at large —Cont'd
- Delinquency in payment by taker-up, §2-38-121.

L**LABELS.****Agriculture.**

- Labeling of fruits and vegetables for interstate shipment, §§2-20-301 to 2-20-310.

Commercial feeds, §2-37-105.

- Misbranding, §2-37-106.
- Prohibited acts, §2-37-108.

Containers.

- Fruits and vegetables.
- Labeling for interstate shipment, §§2-20-301 to 2-20-310.

Fruits.

- Labeling of fruits and vegetables for interstate shipment, §§2-20-301 to 2-20-310.

Interstate commerce.

- Fruits and vegetables, §§2-20-301 to 2-20-310.

Liming materials.

- Grades, §2-19-303.

Soil amendment.

- Approval by board, §2-19-407.
- Label defined, §2-19-402.
- Requirements, §2-19-407.

Vegetables.

- Labeling of fruits and vegetables for interstate shipment.
- General provisions, §§2-20-301 to 2-20-310.

LAW ENFORCEMENT OFFICERS.**Cattle.**

- Quarantine.
- Enforcing quarantine regulations, §2-40-1005.

LEASES.**Agriculture.**

- Agricultural foreign investment.
- Exception for land used for mineral leases, §2-3-110.

Mines and minerals.

- Agricultural foreign investment.
- Exception for land used for mineral leases, §2-3-110.

LICENSES.**Agriculture.**

- Grading of products and containers.
- License of inspector, §2-20-109.

LICENSES —Cont'd**Commercial feeds, §2-37-104.****Fertilizers.**

- Blending or bulk storage facilities, §2-19-202.
- Fees, §2-19-202.
- Sale of fertilizers manufactured at unlicensed facilities.
- Prohibited, §2-19-203.
- Standards and criteria.
- Promulgation by plant board, §2-19-202.

Ginseng.

- Dealers, §2-20-704.
- Fee, §2-20-704.

Liming materials.

- Vendor's license.
- Fee, §2-19-306.
- Required, §2-19-306.

LIENS.**Agriculture.**

- Eradication of pests or diseases.
- Failure to comply with notice, §2-16-211.
- Foreign investment.
- Acquisition by enforcement of lien, §2-3-105.

Boll weevil suppression and eradication.

- Failure to pay assessments, §2-16-617.

Fire ant poison cost sharing program.

- Recovery of costs by plant board, §2-16-106.

Grain.

- Receiver for grain stored in public warehouses.
- Distribution of grain or proceeds without regard to storage lien or charge, §2-17-412.

Pest control.

- Failure to comply with notice, §2-16-211.
- Notice.
- Failure to comply with notice, §2-16-211.

Plant board of state.

- Fire ant poison cost sharing program.
- Recovery of costs, §2-16-106.

LIMESTONE.**Agricultural liming materials, §§2-19-301 to 2-19-308.****LIMING MATERIALS.****Deficiencies.**

- Penalties, §2-19-305.

Defined, §2-19-303.

LIMING MATERIALS —Cont'd**Fees.**

- Registration fee, §2-19-306.
- Vendor's licenses, §2-19-306.

Fines.

- Penalty for violation of article, §2-19-302.

Inspections.

- Authority of plant board, §2-19-307.

Labels.

- Grades, §2-19-303.

Licenses.

- Vendor's license.
- Fee, §2-19-306.
- Required, §2-19-306.

Penalties.

- Deficiencies, §2-19-305.
- Violations, §2-19-302.

Plant board.

- Inspections, §2-19-307.
- Rules and regulations, §2-19-308.
- Sampling and analysis, §2-19-304.
- Stop-sale order, §2-19-304.

Registration.

- Contents, §2-19-306.
- Expiration, §2-19-306.
- Fees, §2-19-306.
- Required, §2-19-306.

Reports.

- Tonnage reports, §2-19-307.

Rules and regulations.

- Plant board, §2-19-308.

Sampling and analysis.

- Authority of plant board, §2-19-304.
- Penalty for deficiency, §2-19-305.

Soil testing.

- Funds, §2-19-307.

Stop-sale orders.

- Plant board, §2-19-304.

Title of act, §2-19-301.**Vendors' licenses, §2-19-306.****Violations.**

- Penalties, §2-19-302.

LIVESTOCK.**Actions.**

- Running at large.
- Refusal to deliver to owner.
- Right of action, §2-38-116.

Advertising.

- Running at large.
- Advertisements of taker-up to be posted, §2-38-111.
- Payment of expenses, §2-38-113.
- Penalty for failure to advertise, §2-38-111.
- Publication in addition to posting, §2-38-112.

LIVESTOCK —Cont'd**Alternate livestock, §2-32-101.****Anthrax.**

- Vaccine.
- Sales.
- Advice and consent of state veterinarian, §2-40-108.

Appraisals.

- Certificate of appraisement, §2-38-108.

Arkansas beef council, §§2-35-301 to 2-35-310.**Beef council, §§2-35-301 to 2-35-310.****Boards and commissions.**

- Livestock and poultry commission, §§2-33-101 to 2-33-401.

Bonds, surety.

- Running at large.
- Bond of taker-up, §2-38-109.
- Record of bond of taker-up, §2-38-110.

Brands and marks.

- Age of branding and earmarking, §2-34-102.
- Brand registry fund.
- Created, §2-34-213.
- Commission.
- Defined, §2-34-201.
- County clerks.
- State brand book.
- Distribution to clerk, §2-34-210.
- Definitions, §2-34-201.
- Director, §2-34-203.
- Defined, §2-34-201.
- Rules and regulations, §2-34-204.
- Division of brand registry.
- Creation, §2-34-203.
- Defined, §2-34-201.
- Records.
- Custody of county brand records, §2-34-205.

Drovers.

- Duty to mark or brand stock driven through state, §2-34-302.
- Recording mark or brand, §2-34-303.

Duplication.

- Misdemeanor, §2-34-202.
- What constitutes, §2-34-202.

Earmarks.

- Age of earmarking, §2-34-102.
- Disputes concerning earmarks or brands, §2-34-106.
- Recording, §2-34-101.

Evidence.

- State brand book.
- Prima facie evidence of ownership, §2-34-211.

Funds.

- Disposition of funds collected, §2-34-213.

LIVESTOCK —Cont'd**Brands and marks —Cont'd****Guardians.**

Brands of minors owning cattle
separate from guardian,
§2-34-103.

Minors.

Brands of minors owning cattle
separate from guardian,
§2-34-103.

Misdemeanors.

Duplication, §2-34-202.

Rebranding or remarking.

Witnesses, §2-34-105.

Records.

Clerks of county courts, §2-34-104.

Custody of county brand records,
§2-34-205.

Division of brand registry.

Custody of county brand records,
§2-34-205.

Duties of clerks of court, §2-34-104.

Earmarks and brands, §2-34-101.

Minors owning cattle separate from
guardian, §2-34-103.

Registration, §2-34-208.

Applications, §2-34-208.

Transfer of registered brands,
§2-34-212.

Reserved brands.

Brands reserved to state, §2-34-209.

Rules and regulations.

Director, §2-34-204.

Running at large.

Examination of record of marks and
brands, §2-38-105.

State.

Brands reserved to state, §2-34-209.

State brand book, §2-34-206.

Distribution to county clerks and
sheriffs, §2-34-210.

Evidence.

Prima facie evidence of ownership,
§2-34-211.

Publication, §2-34-206.

Notification to registrants,
§2-34-207.

Sale, §2-34-210.

Transfer of registered brands,
§2-34-212.

Witnesses.

Rebranding or remarking purchased
cattle, §2-34-105.

Carcass data service, §2-33-203.

Fees, §2-33-203.

Carriers.**Transfer record.**

Receiving livestock without copy,
§2-35-209.

LIVESTOCK —Cont'd**Castration.**

Method, §2-38-202.

Certificate of appraisal, §2-38-108.**Commercial feeds, §§2-37-101 to 2-37-114.****Commission.**

Livestock and poultry commission,
§§2-33-101 to 2-33-401.

Contracts.**Production contracts.**

Definitions, requirements, disputes,
arbitration, violations, relief,
§2-32-201.

Counties.**Running at large.**

Impoundment of animals running at
large.

Daily charges, §2-38-408.

Enclosure provided by county,
§2-38-403.

Stray-pens.

Providing by county, §2-38-114.

Unclaimed estrays.

Payment to county, §2-38-121.

Cremation of dead animals.

Fowl, §§2-40-401 to 2-40-406.

General provisions, §§2-40-301 to
2-40-303.

Damages.**Running at large.**

Liability for damage to crops,
§2-38-301.

Dead animals.

Carcass data service, §2-33-203.

Fees, §2-33-203.

Cremation.

Fowl, §§2-40-401 to 2-40-406.

General provisions, §§2-40-301 to
2-40-303.

Definitions.

Brands and marks, §2-34-201.

Diagnostic testing.

Fees, §2-33-111.

Rules and regulations.

Authority of livestock and poultry
commission, §2-33-111.

Diseases.**Owners of diseased animal.**

Duties, §2-40-104.

Quarantine.

Cattle, §§2-40-1001 to 2-40-1006.

Domestic fish farming, §§2-5-101 to 2-5-103.**Drovers.****Brands and marks.**

Certificate of clerk, §2-34-303.

LIVESTOCK —Cont'd**Drovers —Cont'd**

- Brands and marks —Cont'd
 - Duty to mark or brand stock driven through state, §2-34-302.
- Recording, §2-34-303.
- Other stock prevented from following droves, §2-34-304.
- Violation, §2-34-304.
- Violation.
 - Penalty, §2-34-301.
- Writ of detention, §2-34-304.

Equine monitoring through identification chips, §2-32-301.**Estrays.**

- Death or escape.
 - Liability, §2-38-119.
- Feral hogs, §2-38-504.
- Sale, disposal or killing before expiration of redemption period, §2-38-118.
- Penalty, §2-38-118.
- Unclaimed estrays.
 - Taker-up to make payment to county, §2-38-121.

Evidence.

- Brands and marks.
 - State brand book.
 - Prima facie evidence of ownership, §2-34-211.

Executions.

- Running at large.
 - Delinquency in payment by taker-up, §2-38-121.

Feeding and care of livestock.

- Commercial feeds, §§2-37-101 to 2-37-114.
- Feeder pig and feeder calf grading program.
 - Established, §2-33-204.

Fees, §2-40-1201.

- Diagnostic testing, §2-33-111.
- Disposition of funds, §2-40-1201.
- Rabies.
 - Pseudorabies control and eradication program.
 - Levy of fees to fund, §2-40-1201.

Fences.

- General provisions, §§2-39-101 to 2-39-111.

Fish farming.

- Domestic fish farming, §§2-5-101 to 2-5-103.

Forfeitures.

- Running at large.
 - Forfeiture to taker-up, §2-38-120.

Funds.

- Brand registry fund.
 - Created, §2-34-213.

LIVESTOCK —Cont'd**Funds —Cont'd**

- Federal Arkansas livestock and poultry fund.
 - Creation, §2-33-114.
- Transfer of funds from livestock and poultry equine infectious anemia control fund, §2-33-116.
- Livestock marketing fund, §2-33-206.
- Livestock spraying program fund, §2-33-208.

Interstate commerce.

- Violation of regulations.
 - Misdemeanors, §2-33-110.

Judgments.

- Running at large.
 - Costs, §2-38-122.
- Delinquency in payment by taker-up, §2-38-121.

Killing livestock.

- Feral hogs, §2-38-502.
- Hogs and goats running at large.
 - Sufficiency of notice to owner, §2-38-303.
- Stallions or jacks running at large.
 - Notice, §2-38-203.

Liens.

- Running at large.
 - Lien for crop injuries, §2-38-301.

Livestock shows, §§2-36-101 to 2-36-306.**Marketing.**

- Cooperation with federal and state agencies, §2-33-205.
- Rules and regulations.
 - Promulgation by commission, §2-33-202.

Marketing division.

- Established, §2-33-201.
- Responsibilities, §2-33-201.

Minors.

- Brands and marks.
 - Minors owning cattle separate from guardian, §2-34-103.

Newspapers.

- Running at large.
 - Publication in addition to posting, §2-38-112.

Notary public.

- Transfer record.
 - Persons taking acknowledgment.
 - Fees, §2-35-208.

Notice.

- Running at large.
 - Delinquency in payment by taker-up, §2-38-121.
- Estray not to be used until notice given, §2-38-104.

LIVESTOCK —Cont'd**Notice —Cont'd**

- Running at large —Cont'd
 - Impoundment of animals running at large, §2-38-405.
- Notice to justice when no claimant, §2-38-106.
- Owner failing to take up animal after notice.
 - Penalty, §2-38-302.
- Posting notice description, §2-38-106.
- Service of notice by sheriff, §2-38-121.
- Stallions and jacks.
 - Right to kill, §2-38-203.
- Sufficiency of notice to owner, §2-38-303.

Oaths.

- Running at large.
- Oath of taker-up, §2-38-107.

Penalties.

- Cumulative to penalties of initiated act, §2-38-302.
- Drovers.
 - Violations, §2-34-301.
- Estrays.
 - Selling or disposing, §2-38-118.
- Running at large.
 - Failure to advertise, §2-38-111.
- Owners.
 - Failure to take up animal after notice, §2-38-302.
- Penalties cumulative to penalties of initiated act, §2-38-302.
- Selling or disposing of estray, §2-38-118.
- Transfer records.
 - Violations of act, §2-35-203.

Perjury.

- Transfer records.
 - Applicability, §2-35-207.

Pleadings.

- Running at large.
 - Delinquency in payment by taker-up.
 - Formal pleadings not required for judgment and execution, §2-38-121.

Production contracts.

- Definitions, requirements, disputes, arbitration, violations, relief, §2-32-201.

Publication.

- Running at large.
 - Publication in addition to posting, §2-38-112.

LIVESTOCK —Cont'd**Quarantine.**

- Cattle.
 - General provisions, §§2-40-1001 to 2-40-1006.

Records.

- Stockyards, §2-35-211.
- Transportation.
 - One county to another, §2-35-204.

Rules and regulations.

- Brands and marks.
 - Director, §2-34-204.
- Diagnostic testing.
 - Promulgation by livestock and poultry commission, §2-33-111.

Running at large.

- Actions.
 - Refusal to deliver to owner.
 - Right of action, §2-38-116.
- Advertisements.
- Expenses.
 - Payment, §2-38-113.
- Failure to advertise.
 - Penalty, §2-38-111.
- Persons taking-up animals, §2-38-111.
- Publication in addition to posting, §2-38-112.
- Animals on range.
 - When taken, §2-38-102.
- Bond of taker-up, §2-38-109.
 - Record, §2-38-110.
- Castration.
 - Method, §2-38-202.
- Certificate of clerk.
 - Record of marks and brands, §2-38-105.

Charges.

- Claimant to pay, §2-38-106.
- Compensation for keeping estrays, §2-38-117.
- Compensation for taking-up, §2-38-104.

Counties.

- Impoundment.
 - Enclosure provided by county, §2-38-403.
 - Payment to county for unclaimed estray, §2-38-121.
- Stray-pens.
 - Providing by county, §2-38-114.

Crops.

- Liability for damages, §2-38-301.
- Lien for crop injury, §2-38-301.
- Death or escape of estray.
 - Liability, §2-38-119.
- Delinquency in payment by taker-up, §2-38-121.

LIVESTOCK —Cont'd**Running at large —Cont'd**

Delivery to owner on payment of cost.

Receipt to taker-up, §2-38-115.

Description of animal.

Posting notice, §2-38-106.

Duty of taker-up, §2-38-104.

Executions.

Delinquency in payment by taker-up, §2-38-121.

Exhibition of animal in stray-pen, §2-38-114.

Expenses.

Payment, §2-38-113.

Feral hogs, §2-38-504.

Forfeiture to taker-up, §2-38-120.

Impoundment.

Daily charges.

County entitled to, §2-38-408.

Enclosures.

Delivery, §2-38-404.

Providing by county, §2-38-403.

Newspapers.

Notice of impounding, §2-38-405.

Notice of impounding, §2-38-405.

Purpose of act, §2-38-401.

Reclaiming by owner, §2-38-406.

Sales.

Unclaimed animals, §2-38-407.

Sheriffs.

Delivery to enclosure, §2-38-404.

Duty to impound, §2-38-402.

Special funds, §2-38-408.

State police.

Delivery to enclosure, §2-38-404.

Duty to impound, §2-38-402.

Unclaimed animals.

Sale, §2-38-407.

Judgments.

Delinquency in payment by taker-up.

Judgment against delinquent, §2-38-121.

Judgment for costs, §2-38-122.

Killing hogs and goats.

Sufficiency of notice to owner, §2-38-303.

Mules.

Right to kill.

Notice, §2-38-203.

Taking up.

Right of person taking up, §2-38-202.

Newspapers.

Publication in addition to posting, §2-38-112.

No claimants.

Notice to justice when no claimants, §2-38-106.

LIVESTOCK —Cont'd**Running at large —Cont'd**

Notice.

Delinquency in payment by taker-up, §2-38-121.

Estray not to be used until notice given, §2-38-104.

Notice to justice when no claimant, §2-38-106.

Owner failing to take up animal after notice.

Penalty, §2-38-302.

Posting notice description, §2-38-106.

Service by sheriff, §2-38-121.

Sufficiency of notice to owner, §2-38-303.

Oath of taker-up, §2-38-107.

Order for delivery of animal, §2-38-115.

Owners.

Delivery on payment of cost, §2-38-115.

Failure to take up animal after notice, §2-38-302.

Impoundment of animals running at large.

Reclaiming by owner, §2-38-406.

Owner for delivery of animal, §2-38-115.

Reclamation, §2-38-115.

Refusal to delivery.

Rights of owner, §2-38-116.

Penalties.

Cumulative to penalties of initiated act, §2-38-302.

Failure to advertise, §2-38-111.

Owner failing to take-up animal after notice, §2-38-302.

Selling or disposing of estray, §2-38-118.

Pleadings.

Delinquency in payment by taker-up.

Former pleadings not required for judgment and execution, §2-38-121.

Publication.

Appraisal published in addition to posting, §2-38-112.

Purpose of act, §2-38-401.

Reclamation by owner, §2-38-115.

Records.

Marks and brands.

Certificate of clerk, §2-38-105.

Restrictions on place of taking up, §2-38-103.

LIVESTOCK —Cont'd**Running at large —Cont'd**

Right of person taking up horses, mules or jacks, §2-38-202.

Right to take up animals running at large, §2-38-101.

Sale, disposal or killing of estrays before expiration of redemption period, §2-38-118.

Stallions and jacks.

Right to kill.

Notice, §2-38-203.

Taking up.

Right of person taking up, §2-38-202.

Stray-pen.

Counties to provide, §2-38-114.

Taker-up to exhibit animal, §2-38-114.

Time for claiming animals, §2-38-109.

Unlawful when prohibited by initial act, §2-38-301.

Sales.

Bill of sale.

Required, §2-35-212.

Impoundment of animals running at large.

Sale of unclaimed animals, §2-38-407.

Sheriffs.

Brands and marks.

State brand book.

Distribution to sheriffs, §2-34-210.

Running at large.

Impoundment of animals running at large.

Delivery to enclosure, §2-38-404.

Notice of delinquency in payment.

Service by sheriff, §2-38-121.

Shows, §§2-36-101 to 2-36-306.**Slaughter.**

Sales for slaughter.

Bill of sale required, §2-35-212.

Spraying.

Income from spraying program, §2-33-208.

Rules and regulations.

Livestock and poultry commission, §2-33-207.

State police.

Running at large.

Impoundment of animals running at large.

Delivery to enclosure, §2-38-404.

Stockyards.

Records.

Required, §2-35-211.

LIVESTOCK —Cont'd**Stockyards —Cont'd**

Transfer record.

Receiving livestock without transfer record, §2-35-209.

Tick control, §§2-40-901 to 2-40-906.

Transportation.

Exemptions from provisions, §2-35-202.

One county to another.

Exemptions, §2-35-202.

Records.

Required, §2-35-204.

Transfer record.

Animals named in act include those dead or alive, §2-35-201.

Carriers.

Receiving livestock without copy, §2-35-209.

Contents, §2-35-204.

Copy filed with county clerk, §2-35-208.

Filing with person taking acknowledgment, §2-35-208.

Form, §2-35-205.

Inspection, §2-35-210.

One county to another, §2-35-204.

Perjury.

Law of perjury applicable, §2-35-207.

Persons taking acknowledgment.

Fees, §2-35-208.

Receiving livestock without copy, §2-35-209.

Stockyards.

Receiving livestock without copy, §2-35-209.

Verification, §2-35-206.

Violations.

Penalty, §2-35-203.

Writs.

Drovers.

Writ of detention.

Form, §2-34-304.

LIVESTOCK AND POULTRY COMMISSION.**Actions.**

Cremation of dead animals.

Civil actions for violations of requirement, §2-40-303.

Anthrax spore vaccine.

Sale with advice and consent of state veterinarian, §2-40-108.

Appointment of members, §2-33-102.**Arrest.**

Livestock inspectors.

Powers to arrest, §2-33-108.

LIVESTOCK AND POULTRY COMMISSION —Cont'd

Bonds, surety.

- Employees, §2-33-106.
- Executive director, §2-33-104.
- State veterinarian, §2-33-105.

Carcass data service.

- Established, §2-33-203.
- Fees for data information authorized,
§2-33-203.
- Funding, §2-33-206.

Compensation, §2-33-102.

- Overtime compensation, §2-33-308.

Conflict of laws.

- Disease or pest control and
eradication.
- Repeal of provisions in direct
conflict, §2-40-201.

Created, §2-33-101.

Cremation of dead animals.

- Actions.
 - Civil actions for violations,
§2-40-303.
- Fowl.
 - Disposal of dead fowl generally,
§§2-40-401 to 2-40-406.
- Misdemeanors.
 - Violations of provisions, §2-40-301.
- Penalties.
 - Violations of provisions, §2-40-301.
- Requirement, §2-40-302.
- Exceptions, §2-40-302.

Dairy committee, §2-33-401.

Dead livestock.

- Carcass data service, §2-33-203.
- Cremation.
 - Fowl.
 - Disposal of dead fowl generally,
§§2-40-401 to 2-40-406.
 - General provisions, §§2-40-301 to
2-40-303.
- Disposal of large animal carcasses.
 - Complaints, §2-40-1305.
 - Definitions, §2-40-1301.
 - Method, §2-40-1302.
 - Provision violations.
 - Penalties, §2-40-1303.
 - Regulations, §2-40-1304.
- Fowl.
 - Disposal, §§2-40-401 to 2-40-406.

Deposits.

- Fees, revenues, fines and penalties,
§2-33-113.

Destruction of diseased poultry flocks, §2-40-109.

LIVESTOCK AND POULTRY COMMISSION —Cont'd

Diseases.

- Anthrax spore vaccine.
 - Use.
 - Advice and consent of commission,
§2-40-108.
- Blood test training program,
§2-40-205.
- Conflict of laws.
 - Repeal of provisions in direct
conflict, §2-40-201.
- Destruction of diseased poultry flocks,
§2-40-109.
- Examinations.
 - Contaminated animals, §2-40-106.
- Expenses of enforcement of act,
§2-40-107.
- Federal inspectors.
 - Enforcement of rules, §2-40-103.
- Hog cholera.
 - Reports to commission, §2-40-704.
 - Investigation of report, §2-40-
705.
 - Rules and regulations, §2-40-703.
- Inquiries into outbreaks of disease,
§2-40-103.
- Inspections.
 - Right of entry for purpose of
inspection, §2-40-106.
- Inspectors and agents.
 - Appointment, §2-40-105.
- Interference with employees.
 - Penalty for interference, §2-40-
101.
- Livestock markets.
 - Blood test training program,
§2-40-205.
- Powers of commission, §2-40-202.
 - Subpoena power, §2-40-203.
 - Testing and vaccination of livestock,
§2-40-204.
- Quarantine, §2-40-103.
 - Rules and regulations, §2-40-209.
 - Violations of provisions, §2-40-
209.
- Reports.
 - Veterinary inspectors, §2-40-106.
- Rules and regulations, §§2-40-103,
2-40-202.
- Subpoenas.
 - Power of commission, §2-40-203.
- Supervision of livestock sanitation,
§2-40-102.
- Supplemental nature of provisions,
§2-40-201.

LIVESTOCK AND POULTRY COMMISSION —Cont'd

Diseases —Cont'd

Vaccinations.

Anthrax spore vaccine.

Use.

Advice and consent of
commission, §2-40-108.

Fees.

Funding of brucellosis program,
§2-40-206.

On-the-farm calfhood vaccination.

Costs, §2-40-207.

Powers as to testing and vaccination
of livestock, §2-40-204.

Veterinary inspectors.

Reports to owner, §2-40-106.

Employees.

Bonds, surety, §2-33-106.

Compensation.

Overtime compensation, §2-33-308.

Equine monitoring through identification chips, §2-32-301.

Established, §2-33-101.

Executive director, §2-33-104.

Appointment, §2-33-104.

Bond, surety, §2-33-104.

Duties, §2-33-104.

Powers, §2-33-104.

Expenses, §2-33-102.

Feeder pig and feeder calf grading program.

Established, §2-33-204.

Fees, §2-33-204.

Failure to pay, §2-33-204.

Funding, §2-33-206.

Fees, §§2-33-113, 2-33-115.

Carcass data information, §2-33-203.

Deposit of funds received, §2-33-206.

Diagnostic testing.

Disposition of fees, §2-33-111.

Fee structure, §2-33-111.

Feeder pig and feeder calf grading
program, §2-33-204.

Failure to pay, §2-33-204.

Fowl.

Disposal of dead fowl.

Carcasses.

Cremation, §§2-40-403, 2-40-404.

Defined, §2-40-401.

Definitions, §2-40-401.

Environmental quality.

Jurisdiction of Arkansas
department unimpaired,
§2-40-406.

Methods, §§2-40-403, 2-40-404.

Misdemeanors, §2-40-402.

Procedure, §2-40-404.

LIVESTOCK AND POULTRY COMMISSION —Cont'd

Fowl —Cont'd

Disposal of dead fowl —Cont'd

Required, §2-40-403.

Rules and regulations, §2-40-405.

Specifications, §2-40-404.

Violations of provisions, §2-40-402.

Funds.

Livestock marketing fund, §2-33-206.

Hog cholera.

Reports to commission, §2-40-704.

Investigation of report, §2-40-705.

Rules and regulations, §2-40-703.

Inspections.

Livestock markets.

Generally, §2-40-208.

Inspectors and agents.

Appointments, §2-40-105.

Interstate commerce.

Cooperation with federal and state
agencies, §2-33-305.

Movement of livestock or poultry in
violation of regulations.

Misdemeanor, §2-33-110.

Investigations.

Hog cholera.

Investigation of report, §2-40-705.

Livestock inspectors.

Arrest powers, §2-33-108.

Livestock marketing.

Cooperation with federal and state
agencies, §2-33-205.

Livestock marketing division.

Established, §2-33-201.

Responsibilities, §2-33-201.

Rules and regulations.

Promulgation by commission,
§2-33-202.

Livestock markets.

Blood test training program,
§2-40-205.

Closing for noncompliance with
standards, §2-40-208.

Diseases.

Blood test training program,
§2-40-205.

Inspections.

Generally, §2-40-208.

Standards.

Noncompliance, §2-40-208.

Promulgation, §2-40-208.

Livestock shows.

Rules for grading fairs.

Formulation by commission,
§2-36-101.

Meetings.

Quorum, §2-33-103.

LIVESTOCK AND POULTRY COMMISSION —Cont'd

Meetings —Cont'd

Rules of business, §2-33-103.

Members, §2-33-102.

Mileage allowance, §2-33-102.

Oaths, §2-33-102.

Officers, §2-33-103.

Orders, §2-33-109.

Penalties.

Cremation of dead animals.

Violations of provisions, §2-40-301.

Diseases.

Interference with employees,
§2-40-101.

Distribution of fines and penalties,
§2-33-113.

Powers and duties of commission.

Additional powers, §2-33-107.

Quarantine.

Rules and regulations, §2-40-209.

Establishment, §2-40-103.

Quorum, §2-33-103.

Rabies.

Declaration of rabies infested area,
§2-40-1101.

Representation of congressional districts, §2-33-102.

Rules and regulations, §2-33-109.

Diagnostic testing.

Authority of commission to
promulgate, §2-33-111.

Disease or pest control and
eradication, §2-40-202.

Disposal of dead fowl, §2-40-405.

Disposal of large animal carcasses.
Method, §2-40-1302.

Promulgation, §2-40-1304.

Fees, promulgation, §2-33-115.

Hog cholera, §2-40-703.

Livestock marketing, §2-33-202.

Quarantine, §2-40-209.

Spraying of livestock, §2-33-207.

Tick control program, §2-40-903.

Rules of business, §2-33-103.

Small animal diagnostic testing.

Fees, §2-33-112.

Rules and regulations, §§2-33-111,
2-33-112.

Spraying of livestock, §2-33-207.

Income from spraying program,
§2-33-208.

Rules and regulations, §2-33-207.

State departments and agencies.

Cooperation with state agencies,
§2-33-305.

Livestock marketing.

Cooperation with state agencies,
§2-33-205.

LIVESTOCK AND POULTRY COMMISSION —Cont'd

State veterinarian.

Anthrax spore vaccine.

Sale with advice and consent of
state veterinarian, §2-40-108.

Appointment, §2-33-105.

Bond, surety, §2-33-105.

Duties, §2-33-105.

Powers, §2-33-105.

Qualifications, §2-33-105.

Subpoenas.

Disease or pest control and
eradication.

Power of subpoena, §2-40-203.

Supervising sanitation of livestock, §2-40-102.

Terms of office, §2-33-102.

Tick control, §§2-40-901 to 2-40-906.

United States.

Cooperation with federal agencies,
§2-33-305.

Livestock marketing.

Cooperation with federal agencies,
§2-33-205.

Vacancies, §2-33-102.

Veterinary inspectors.

Reports.

Furnishing owner with report,
§2-40-106.

LIVESTOCK SHOWS.

Accounts and accounting.

Reports.

Accounting reports by recipients of
funds, §2-36-211.

Appropriations.

Construction and operation, §2-36-206.

Arkansas-Oklahoma district fair, §2-36-307.

Audits.

Associations, §2-36-210.

Boards and commissions.

Northeast Arkansas district fair
advisory board, §2-36-302.

Bonds, surety.

Executive officer, §2-36-208.

Amount of bond, §2-36-209.

Counties.

Adjoining counties.

Joint fair and livestock shows,
§2-36-303.

Division of funds among counties and
districts, §2-36-204.

Joint fair and livestock shows.

Allocation and use of funds,
§2-36-303.

Allocation of premium funds,
§2-36-303.

LIVESTOCK SHOWS —Cont'd**Counties —Cont'd**

Joint fair and livestock shows —Cont'd

Grading, §2-36-303.

Nonresident landowners.

Eligibility to participate in county show, §2-36-304.

Definitions.

Exhibitor, §2-36-102.

District junior livestock shows,

§2-36-305.

District livestock show.

Northwest Arkansas district fair and livestock show, §2-36-301.

Entry classifications.

Categories excluded, §2-36-101.

Determination by advisory committee, §2-36-101.

Executive officers.

Bonds, §2-36-208.

Amount, §2-36-209.

Exhibitor.

Defined, §2-36-102.

Funds.

Applications, §2-36-207.

Division among counties and districts, §2-36-204.

Grading fairs.

Formulation of rules by livestock and poultry commission, §2-36-101.

Rules, §2-36-101.

Junior division.

Premium funds, §2-36-205.

Junior livestock shows, §2-36-305.**Livestock associations.**

Audits of expenditures, §2-36-210.

Nonresidents.

Eligibility to participate in county show, §2-36-304.

North Central Arkansas district fair and livestock show, §2-36-306.**Northeast Arkansas district fair advisory board.**

Chairman, §2-36-302.

Creation, §2-36-302.

Duties, §2-36-302.

Members, §2-36-302.

Reapportionment after census, §2-36-302.

Quorum, §2-36-302.

Reapportionment of membership after census, §2-36-302.

Terms, §2-36-302.

Vacancies, §2-36-302.

Northwest Arkansas district fair and livestock show.

Counties in district, §2-36-301.

Established, §2-36-301.

LIVESTOCK SHOWS —Cont'd**Northwest Arkansas district fair and livestock show —Cont'd**

Privileges and status, §2-36-301.

Premium funds.

Accounting reports by recipients, §2-36-211.

Administration of provisions, §2-36-201.

Amount, §2-36-209.

Disbursement and expenditure.

Generally, §2-36-202.

Generally, §2-36-202.

Joint fair and livestock shows.

Allocation of premium funds, §2-36-303.

Junior division, §2-36-205.

Livestock and poultry commission.

Administration of provisions, §2-36-201.

Reports.

Accounting reports by recipients, §2-36-211.

State fair.

Use by state fair and livestock association, §2-36-203.

Use.

Restrictions on use, §2-36-205.

Reports.

Accounting reports by recipients of funds, §2-36-211.

Sales.

Immoral, lewd, etc., items, §2-36-103.

State fair.

Premium funds, §2-36-203.

LOANS.**Agriculture.**

Foreign investors.

Right to loan to Arkansas farmers, §2-3-104.

Boll weevil suppression and eradication.

Cotton growers' organizations, §2-16-612.

M**MANURE.****Natural organic fertilizers,**

§§2-19-501 to 2-19-503.

MARKETING.

Catfish promotion board, §§2-9-101 to 2-9-112.

MARKETING ASSOCIATIONS.**Agricultural cooperative**

associations, §§2-2-101 to 2-2-313.

MARKETING ASSOCIATIONS

—Cont'd

Cooperative marketing associations,
§§2-2-401 to 2-2-430.**MARL.****Agricultural liming materials,**
§§2-19-301 to 2-19-308.**MEAT AND MEAT PRODUCTS.****Hogs.**Feral hogs.
Livestock health requirements,
§2-38-503.**MEDIATION.****Farm mediation,** §§2-7-101 to 2-7-310.**MILK AND MILK PRODUCTS.****Milk stabilization board,** §§2-10-101
to 2-10-104.Creation, §2-10-103.
Findings and purposes, §2-10-102.
Members, §2-10-103.
Powers and duties, §2-10-104.
Title of provisions, §2-10-101.**Stabilization board,** §§2-10-101 to
2-10-104.**MINES AND MINERALS.****Agriculture.**Foreign investment.
Exception for land used for mineral
leases, §2-3-110.**Leases.**Agricultural foreign investment.
Exception for land used for mineral
leases, §2-3-110.**MINORS.****Cattle.**Brands and marks.
Minors owning cattle separate from
father or guardian, §2-34-103.**Hogs.**Brands of minors owning hogs
separate from father or guardian,
§2-34-103.**Livestock.**Brands and marks.
Minors owning cattle separate from
father or guardian, §2-34-103.**MISREPRESENTATION.****Agriculture.**Grading of products and containers.
Misrepresentation as to grade or
classification, §2-20-116.
Labeling of fruits and vegetables for
interstate shipment, §2-20-308.**MONOPOLIES AND RESTRAINT OF
TRADE.****Agricultural cooperative
associations.**Associations and contracts not in
restraint of trade, §2-2-122.**Cooperative marketing associations.**Associations and contracts not in
restraint of trade, §2-2-426.**Price fixing.**Cooperative marketing associations,
§2-2-426.**MORTGAGES AND DEEDS OF
TRUST.****Agricultural cooperative
associations.**Merger or consolidation.
Mortgage and sale of assets,
§2-2-310.**MOTOR CARRIERS.****Cattle.**Transfer record.
Receiving without copy, §2-35-209.**Goats.**

Transfer records, §2-35-209.

Livestock.

Transfer record, §2-35-209.

MOTOR VEHICLES.**Fences.**Escaped livestock where damaged by
motor vehicle.
Owner's liability, §2-39-109.**MULES.****Estrays.**

Compensation for keeping, §2-38-117.

Running at large.

Right of person taking up, §2-38-202.

N**NAMES.****Soil amendment.**

Definition of "name," §2-19-402.

NATURAL ORGANIC FERTILIZERS,

§§2-19-501 to 2-19-503.

NEWSPAPERS.**Grain.**Public grain warehouses.
Receiver for grains stored in public
warehouse.
Publication of appointment,
§2-17-406.**Livestock.**Running at large.
Publication in addition to posting,
§2-38-112.

NONRESIDENTS.**Bees and honey.**

Registration, §2-22-110.

Livestock shows.

Eligibility to participate in county show, §2-36-304.

Poultry.

Commercial poultry buyers.

Bonds required, §2-35-213.

Purchase without bond, §2-35-213.

NORTH CENTRAL ARKANSAS DISTRICT FAIR AND LIVESTOCK SHOW, §2-36-306.**NOTARIES PUBLIC.****Livestock.**

Transfer record.

Persons taking acknowledgment.

Fees, §2-35-208.

NOTICE.**Agriculture.**

Grading of products and containers.

Standards and classifications.

Notice of adoption or modifications, §2-20-105.

Bees and honey.

Transporting of bees.

Plant board to be notified, §2-22-111.

Boll weevil suppression eradication.

Eradication zones.

Noncommercial cotton prohibition and requirement of commercial cotton grower participation, §2-16-610.

Brucellosis.

Eradication of herds identified with brucellosis, §2-40-210.

Commercial feeds.

Inspections, §2-37-111.

Cooperative marketing associations.

Regular and special meetings, §2-2-413.

Goats.

Running at large.

Sufficiency of notice to owner, §2-38-303.

Grain.

Public grain warehouses.

Receiver for grain stored in public warehouses.

Notice of hearing on petition filed by commissioner, §2-17-404.

Notice to holders of warehouse receipts or unpriced scale tickets, §2-17-405.

Hogs.

Running at large.

Sufficiency of notice to owner, §2-38-303.

NOTICE —Cont'd**Livestock.**

Running at large.

Delinquency in payment by taker-up, §2-38-121.

Estray not to be used until notice given, §2-38-104.

Impoundment of animals running at large, §2-38-405.

Notice to justice when no claimant, §2-38-106.

Owner failing to take up animal after notice.

Penalty, §2-38-302.

Posting notice description, §2-38-106.

Service of notice by sheriff, §2-38-121.

Stallions and jacks.

Right to kill, §2-38-203.

Sufficiency of notice to owner, §2-38-303.

Pest control.

Pests within state.

Board to give notice, §2-16-212.

Written notice to owner, §2-16-211.

Rice certification act.

Violations, §2-15-206.

Seeds.

Arbitration of defective seed claims.

Acceptance or rejection of arbitration committee's recommendation, §2-23-110.

Notice of mandatory arbitration.

Prerequisite to legal action, §2-23-102.

Form, §2-23-102.

NUISANCES.**Actions.**

Agricultural facilities.

Actions for injuries or damages not affected, §2-4-106.

Agricultural operations.

Actions for injuries or damages not affected, §2-4-106.

Applicability of provisions to contracts, §2-4-103.

Declaration of policy, §2-4-101.

Definitions, §2-4-102.

Employment of practices commonly or reasonably associated with production, §2-4-107.

Establishment prior to commencement of use of surrounding area, §2-4-107.

Expert fees, court costs, attorney's fees.

Awarding to prevailing party, §2-4-107.

NUISANCES —Cont'd**Agricultural operations —Cont'd**

Facilities or appurtenances not to become nuisance, §2-4-107.

Legislative determinations, §2-4-101.

Liberal construction of chapter, §2-4-108.

Present or future nuisance ordinances void, §2-4-105.

Boll weevil suppression and eradication.

General provisions, §§2-16-601 to 2-16-617.

Johnson grass.

Declared public nuisance, §2-16-508.

Injunctions, §2-16-508.

NURSERIES.**Appeals.**

Licenses.

Denial, §2-21-110.

Invalidation, §2-21-111.

Fraud.

Nursery fraud act.

Agents.

Defined, §2-21-102.

Certificates of authority.

Fee, §2-21-112.

Citation of act.

Short title, §2-21-101.

Dealers.

Defined, §2-21-102.

Definitions, §2-21-102.

Deposits.

Moneys collected, §2-21-113.

District attorneys.

Prosecutions under act, §2-21-105.

Fees.

Certificates of authority for giving horticultural advice, §2-21-112.

Deposit and use of money collected, §2-21-113.

Licenses, §2-21-108.

Deposit and use of money collected, §2-21-113.

General provisions, §§2-21-101 to 2-21-113.

Horticultural advice.

Certificates of authority for giving, §2-21-112.

Rendering expert advice, §2-21-112.

Misdemeanors.

Violations of provisions, §2-21-104.

Nursery.

Defined, §2-21-102.

Nurseryman.

Defined, §2-21-102.

NURSERIES —Cont'd**Fraud —Cont'd**

Nursery fraud act —Cont'd

Nursery stock.

Defined, §2-21-102.

Penalties.

Violations of provisions, §2-21-104.

Person.

Defined, §2-21-102.

Plant board.

Rules and regulations, §2-21-106.

Prohibited acts, §2-21-103.

Prosecutions under act, §2-21-105.

Rules and regulations, §2-21-106.

Title of act.

Short title, §2-21-101.

Violations of provisions.

Misdemeanors, §2-21-104.

Penalties, §2-21-104.

Prosecution, §2-21-105.

Unlawful acts, §2-21-103.

Licenses.

Appeals.

Denial of license, §2-21-110.

Invalidation of license, §2-21-111.

Contents, §2-21-107.

Denial, §2-21-110.

Expiration, §2-21-109.

Fees, §2-21-108.

Deposit and use of money collected, §2-21-113.

Invalidation, §2-21-111.

Issuance, §2-21-107.

Annual basis, §2-21-109.

Penalties.

Nursery fraud act.

Violations, §2-21-104.

Prosecuting attorneys.

Nursery fraud act.

Prosecutions under act, §2-21-105.

Rules and regulations.

Nursery fraud act.

Plant board, §2-21-106.

O**OATHS.****Livestock.**

Running at large.

Oath of taker-up, §2-38-107.

Livestock and poultry commission, §2-33-102.

ORCHARDS.**Claims.**

Presentation of claims to county court for destroyed trees, §2-16-101.

ORCHARDS —Cont'd**State board on orchard inspection.**

Compensation for trees destroyed by board, §2-16-101.

ORDERS.**Grain.**

Receivers for grain stored in public warehouses.

Issuance of temporary orders by court, §2-17-402.

Livestock and poultry commission, §2-33-109.**Pesticides.**

Plant board.

Stop-sale, use, or removal orders, §§2-16-413, 2-16-414.

Soil amendment.

Stop-sale, use or removal orders, §2-19-412.

ORDINANCES.**Agricultural operations.**

Present or future nuisance ordinance void, §2-4-105.

Nuisances.

Agricultural operations.

Present or future nuisance ordinances void, §2-4-105.

ORGANIC FERTILIZERS.**Natural organic fertilizers,**

§§2-19-501 to 2-19-503.

ORNAMENTAL FISH.**Commercial bait and ornamental fish act, §§2-5-201 to 2-5-208.****P****PARTIES.****Grain.**

Receiver for grain stored in public warehouses.

Holders of warehouse receipts or unpriced scale tickets not parties, §2-17-405.

Surety joined as party defendant, §2-17-409.

PEACHES.**Labeling of fruits and vegetables for interstate shipment.**

Products to which act applies, §2-20-303.

PEAR TREES.**Compensation for destroyed trees, §2-16-101.**

Presentation of claims to county court, §2-16-101.

PERJURY.**Cattle.**

Transfer records.

Law of perjury applicable, §2-35-207.

Goats.

Transfer records, §2-35-207.

Hogs.

Transfer records, §2-35-207.

Horses.

Transfer records, §2-35-207.

Livestock.

Transfer records.

Applicability, §2-35-207.

Sheep.

Transfer records, §2-35-207.

PEST CONTROL.**Agents.**

Act of employee or agent deemed act of principal, §2-16-204.

Boll weevil suppression and eradication, §§2-16-601 to 2-16-617.**Conflicts with federal law, §2-16-205.****Employees.**

Act of employee or agent deemed act of principal, §2-16-204.

Eradication of pests.

Notice to owner, §2-16-211.

Inspections.

Fees, §2-16-209.

Sale, shipment or disposal of plants or products.

Certificate of inspection required, §2-16-210.

Liens.

Failure to comply with notice, §2-16-211.

Notice.

Failure to comply with notice, §2-16-211.

Notice.

Pests within state.

Board to give notice, §2-16-212.

Written notice to owner, §2-16-211.

Receivers.

Prohibited plants or products.

Duties of receivers, §2-16-213.

Searches and seizures.

Insect pests, weeds or prohibited plants, §2-16-209.

Transportation of insect pests into state, §2-16-209.**PESTICIDES.****Active ingredient.**

Defined, §2-16-403.

Formulas.

Submission to plant board, §2-16-407.

PESTICIDES —Cont'd**Adulteration.**

- Defined, §2-16-403.
- Unlawful acts, §2-16-411.

Animals.

- Defined, §2-16-403.

Appeals.

- Decisions of plant board, §2-16-408.

Beneficial insects.

- Defined, §2-16-403.

Condemnation, §2-16-414.**Control act.**

- Administration, §2-16-405.
- Citation of act, §2-16-401.
- Declaration of purpose, §2-16-402.
- Definitions, §2-16-403.
- Legislative declarations, §2-16-402.
- Title of act, §2-16-401.

Cotton.

- Date of manufacture stamped on cotton insecticides, §2-16-102.

Definitions, §2-16-403.**Defoliants.**

- Defined, §2-16-403.

Desiccants.

- Defined, §2-16-403.

Devices.

- Defined, §2-16-403.

Distribute.

- Defined, §2-16-403.

Enforcement, §2-16-412.**Environment.**

- Defined, §2-16-403.

EPA.

- Defined, §2-16-403.

Experimental use permits, §2-16-409.**Fees.**

- Registration, §2-16-407.

FIFRA.

- Defined, §2-16-403.

Formulas.

- Submission to plant board, §2-16-407.

Fungi.

- Defined, §2-16-403.

Highly toxic pesticide.

- Defined, §2-16-403.

Imminent hazard.

- Defined, §2-16-403.
- Determination by plant board, §2-16-408.

Inert ingredients.

- Defined, §2-16-403.
- Formulas.
 - Submission to plant board, §2-16-407.

Ingredient statement.

- Defined, §2-16-403.

PESTICIDES —Cont'd**Ingredient statement —Cont'd**

- When pesticide deemed misbranded, §2-16-410.

Insects.

- Defined, §2-16-403.

Inspections.

- Plant board, §2-16-406.
- Right of entry of plant board, §2-16-412.

Labels.

- Defined, §2-16-403.
- Misbranding.
 - When pesticide deemed misbranded, §2-16-410.
- Noncompliance.
 - Determination by plant board, §2-16-408.

Misbranding.

- Unlawful acts, §2-16-411.
- When pesticide deemed misbranded, §2-16-410.

Nematodes.

- Defined, §2-16-403.

Orders.

- Plant board.
 - Stop-sale, use or removal orders, §§2-16-413, 2-16-414.

Permits.

- Experimental use permits, §2-16-409.

Person.

- Defined, §2-16-403.

Pests.

- Defined, §2-16-403.

Plant board.

- Administration of control act, §2-16-405.
- Appeals, §2-16-408.
- Authority generally, §2-16-406.
- Cooperation with federal government or agencies of state, §2-16-416.
- Defined, §2-16-403.
- Delegation of duties, §2-16-405.
- Duties.
 - Delegation, §2-16-405.
- Enforcement, §2-16-412.
- Funds.
 - Disposition, §2-16-419.
- Inspections.
 - Authority, §2-16-406.
- Labels.
 - Determination of noncompliance, §2-16-408.
- Orders.
 - Stop-sale, use or removal orders.
 - Hearings, §2-16-414.
 - Issuance, §2-16-413.
 - Powers, §2-16-406.

PESTICIDES —Cont'd**Plant board —Cont'd**

Publication of information, §2-16-417.

Registration.

Exception from registration,
§2-16-407.

Refusal to register, §2-16-408.

Restricted use pesticides.

Adoption, §2-16-406.

Right of entry, §2-16-412.

Rules and regulations, §2-16-406.

Subpoenas.

Power to issue, §2-16-415.

Trade secrets.

Protection, §2-16-418.

Plant regulators.

Defined, §2-16-403.

Protect health and the environment.

Defined, §2-16-403.

Publications.

Plant board may publish information,
§2-16-417.

Registrant.

Defined, §2-16-403.

Registration.

Appeals, §2-16-408.

Cancellation or suspension, §2-16-408.

Definition of registrants, §2-16-403.

Refusal to register, §2-16-408.

Required, §2-16-407.

Statement with plant board,
§2-16-407.

Unlawful acts, §2-16-411.

When not required, §2-16-407.

Restricted use pesticides.

Authority of plant board to adopt,
§2-16-406.

Defined, §2-16-403.

Spray adjuvants.

Defined, §2-16-403.

State restricted pesticides.

Defined, §2-16-403.

Stop sale orders, §2-16-413.**Storage and disposal.**

Manner, §2-16-411.

Subpoenas.

Power of plant board, §2-16-415.

Tests.

Full description of tests made and
results, §2-16-407.

Trade secrets.

Protection, §2-16-418.

United States.

Plant board may cooperate with
federal government, §2-16-416.

Unlawful acts, §2-16-411.**Unreasonable adverse effects on the environment.**

Defined, §2-16-403.

PESTICIDES —Cont'd**Violations, §2-16-411.**

Violations of pesticide control act,
§2-16-404.

Weeds.

Defined, §2-16-403.

Wildlife.

Defined, §2-16-403.

PETITIONS.**Boll weevil suppression and eradication.**

Failure to pay assessments.

Destruction of cotton.

Cotton not destroyed deemed
public nuisance.

Petition to condemn and destroy
cotton, §2-16-617.

Brucellosis.

Modified certified brucellosis free
areas, §2-40-601.

Grain.

Receivers for grain stored in public
warehouses.

Appointment of commissioner as
receiver, §2-17-402.

PIGS.**Feeder pig and feeder calf grading program.**

Fees.

Failure to pay, §2-33-204.

Livestock and poultry commission.

Authority to establish program,
§2-33-204.

PLANT BOARD.**Boll weevil suppression and eradication.**

General provisions, §§2-16-601 to
2-16-617.

Commercial bait and ornamental fish act, §§2-5-201 to 2-5-208.**Rice certification act, §§2-15-201 to 2-15-208.****Seeds.**

Arbitration of defective seed claims.

General provisions, §§2-23-101 to
2-23-110.

Turf grass.

Certification by board, §2-16-109.

PLEADINGS.**Livestock.**

Running at large.

Delinquency in payment by taker
up.

Formal pleadings not required for
judgment and execution,
§2-38-121.

POTATOES.**Irish potatoes.**

- Labeling of fruits and vegetables for interstate shipment.
- Products to which act applies, §2-20-303.

POULTRY.**Bonds, surety.**

- Nonresident commercial buyers, §2-35-213.
- Insuring payment of poultry purchase, §2-35-213.
- Purchase without bond, §2-35-213.

Commercial feeds, §§2-37-101 to 2-37-114.**Contracts.**

- Production contracts.
- Definitions, requirements, disputes, arbitration, violations, relief, §2-32-201.

Diagnostic testing.

- Livestock and poultry commission.
- Promulgation of rules and regulations, §2-33-111.

Diseased poultry flocks.

- Destruction, §2-40-109.

Disposal of dead fowl, §§2-40-401 to 2-40-406.**Feed.**

- Commercial feeds, §§2-37-101 to 2-37-114.

Fees.

- Diagnostic testing, §2-33-111.

Livestock and poultry commission, §§2-33-101 to 2-33-401.**Nonresidents.**

- Commercial poultry buyers.
- Bonds required, §2-35-213.
- Purchase without bond, §2-35-213.

Poultry and egg grading program.

- Agreements with federal government, §2-33-306.

Costs.

- Collection, §2-33-304.
- Proration of costs among processors, §2-33-304.

Division of markets and grading.

- Established, §2-33-301.
- Responsibility, §2-33-301.

Employees.

- Civil service system, §2-33-302.
- Compensation.
- Overtime compensation, §2-33-308.
- Retirement, §2-33-302.

Established, §2-33-303.**Funds, §2-33-307.**

- Disposition of funds, §2-33-307.

POULTRY —Cont'd**Poultry and egg grading program —Cont'd**

- Interstate movement.
- Cooperation with federal and state agencies, §2-33-305.
- Rules and regulations, §2-33-304.
- United States department of agriculture.
- Establishment of program in cooperation with, §2-33-303.

Production contracts.

- Definitions, requirements, disputes, arbitration, violations, relief, §2-32-201.

Retirement.

- Poultry and egg grading program.
- Retirement provisions for employees, §2-33-302.

Rules and regulations.

- Diagnostic testing.
- Promulgation by commission, §2-33-111.
- Poultry and egg grading, §2-33-304.

PREEMPTION.**Fertilizers, preemption of local laws, §2-19-212.****PRISON TERMS.****Agricultural cooperative associations, §2-2-202.****Plant disease and pest control.**

- Prosecution, §2-16-304.

PROMISSORY NOTES.**Cooperative marketing associations.**

- Acceptance of notes of members, §2-2-417.

PROPERTY.**Agricultural cooperative associations.**

- Powers as to property, §2-2-106.

Cooperative marketing associations.

- Powers as to property, §2-2-406.

PROSECUTING ATTORNEYS.**Nurseries.**

- Nursery fraud act.
- Prosecutions under act, §2-21-105.

PUBLICATION.**Boll weevil suppression eradication.**

- Eradication zones.
- Noncommercial cotton prohibition and requirement of commercial cotton grower participation.
- Notice, §2-16-610.

Grain.

- Receiver for grains stored in public warehouses.
- Appointment of receivers, §2-17-406.

PUBLICATION —Cont'd**Livestock.**

Running at large.

Publication in addition to posting,
§2-38-112.

Q**QUARANTINE.****Agriculture.**

Emergency plant act, §§2-16-307,
2-16-308.

Animals.

Cattle, §§2-40-1001 to 2-40-1006.

Bees and honey, §2-22-112.**Boll weevil suppression eradication,
§2-16-609.****Cattle.**

General provisions, §§2-40-1001 to
2-40-1006.

Governor.

Emergency plant act.

Proclamation of governor, §2-16-307.

Hog cholera.

Herds infected with or exposed to hog
cholera, §2-40-706.

Horses.

Equine infectious anemia, §2-40-812.

Quarantined holding facilities.

Requirements for, §2-40-817.

Reactors, §2-40-813.

Livestock and poultry commission.

Rules and regulations, §2-40-209.

Establishment, §2-40-103.

R**RABIES.****Cattle.**

Vaccination.

Cost of vaccine, §2-40-1101.

Declaration of rabies infested area.

Duties of livestock and poultry
commission, §2-40-1101.

Livestock and poultry commission.

Declaration of rabies infested area,
§2-40-1101.

**Pseudorabies control and
eradication program.**

Levy of fees to fund, §2-40-1201.

Vaccinations.

Cost of vaccinating cattle, §2-40-1101.

RAILROADS.**Cattle.**

Quarantine.

Excreta.

Throwing excreta or other refuse,
§2-40-1006.

RAILROADS —Cont'd**Cattle —Cont'd**

Quarantine —Cont'd

Fencing right of way, §2-40-1006.

Transporting cattle through state
permitted, §2-40-1003.

Unloading cattle beyond quarantine
line, §2-40-1006.

REAL PROPERTY.**Agricultural cooperative
associations.**

Powers as to real property, §2-2-106.

Cooperative marketing associations.

Powers as to real property, §2-2-406.

RECEIVERS.**Agriculture.**

Prohibited plants or products.

Duties of receivers, §2-16-213.

**Catfish processor fair practices,
§§2-6-109 to 2-6-123.****Grain.**

Public warehouses.

Receiver for grain stored in public
warehouses, §§2-17-201 to
2-17-416.

Pest control.

Prohibited plants or products.

Duties of receivers, §2-16-213.

Warehouses.

Grain.

Public warehouses.

Receiver for grain stored in public
warehouses, §§2-17-201 to
2-17-416.

RECORDS.**Boll weevil suppression eradication.**

Cotton growers' organizations.

Availability for inspection or audit,
§2-16-612.

Catfish promotion board.

Assessment records, §2-9-110.

Cattle.

Beef promotion and research,
§2-35-403.

Stockyards, §2-35-211.

Transportation.

One county to another, §2-35-204.

Commercial feeds, §2-37-109.**Cotton.**

Gins and ginnerers.

Penalty for failure to keep records,
§2-20-206.

Record of weights required,
§2-20-207.

Seed cotton purchased, §2-20-205.

Grain.

Public grain warehouses.

Maintenance of records, §2-17-234.

RECORDS —Cont'd**Hogs.**

Transportation.

One county to another, §2-35-204.

Horses.

Transportation.

One county to another, §2-35-204.

Rice.

Research and promotion act.

Buyers, §2-20-508.

Seeds.

Arbitration of defective seed claims.

Arbitration committee.

Activities of committee, §2-23-109.

Soybeans.

Promotion.

Inspection of books and records,
§2-20-407.**Wheat promotion act.**

Buyers, §2-20-607.

REGISTRATION.**Bees and honey, §2-22-110.****Catfish processor fair practices.**

Processors, §2-6-105.

Commercial feeds, §2-37-104.

Failure or refusal to register.

Prohibited acts, §2-37-108.

Fertilizers, §2-19-202.

Approval by plant board, §2-19-202.

Cancellation, §2-19-202.

Expiration, §2-19-202.

Fees, §2-19-202.

Guaranteed analysis, §2-19-202.

Required, §2-19-202.

Special fertilizer grade, §2-19-202.

Liming materials.

Contents, §2-19-306.

Expiration, §2-19-306.

Fees, §2-19-306.

Required, §2-19-306.

Seeds.Improper use of term "registered,"
§2-18-107.**Soil amendment.**Refusal of plant board to register,
§2-19-409.

Revocation, §2-19-409.

Soil amendment products, §2-19-408.

REPORTS.**Agriculture.**

Emergency plant act.

Annual report of plant board,
§2-16-310.**Boll weevil suppression eradication.**

Furnishing to plant board, §2-16-608.

Cattle.

Beef council.

Assessments, §2-35-306.

REPORTS —Cont'd**Cooperative marketing associations.**

Annual report, §2-2-422.

Spreading false reports.

Penalty, §2-2-420.

Equine infectious anemia.

Suspected untested horse.

Citizen reporting, §2-40-828.

Fertilizers.

Grades.

Mixed formulations reported on
monthly basis, §2-19-202.

Guaranteed analysis, §2-19-203.

Tonnage reports, §2-19-209.

Fire ant advisory board, §2-16-705.**Grain.**Receiver for grain stored in public
warehouses.Final report of commissioner,
§2-17-416.**Hogs.**

Cholera.

Duty to report, §2-40-704.

Investigation of hog cholera report,
§2-40-705.**Horses.**

Equine infectious anemia.

Test results, §2-40-811.

Liming materials.

Tonnage reports, §2-19-307.

Livestock shows.Accounting reports by recipients of
funds, §2-36-211.**Rice.**

Research and promotion act.

Buyers, §2-20-508.

Seeds.

Arbitration of defective seed claims.

Arbitration committee.

Activities of committee.

Filing of report with plant
board, §2-23-109.Investigation and report,
§2-23-107.**Soil amendment.**

Sales reports.

Filing, §2-19-410.

Soybeans.

Promotion.

Assessments.

Persons responsible for collecting,
§2-20-407.**Wheat promotion act.**

Buyers, §2-20-607.

RESEARCH.**Agriculture.**

Biotechnology research.

Definition of "qualified research,"
§2-8-103.

RESEARCH —Cont'd**Agriculture** —Cont'd

Biotechnology research —Cont'd

Tax credits, §2-8-105.

Corn and grain sorghum promotion board.

Research and extension program, §2-20-806.

Crops.

Damage or destruction of field crop products, §2-15-101.

Beef promotion and research.

General provisions, §§2-35-401 to 2-35-407.

Corn and grain sorghum promotion board.

Research and extension program, §2-20-806.

Crops.

Damage or destruction of field crop products, §2-15-101.

Equine infectious anemia.

Research facilities, prevention of infection, §2-40-829.

Horses.

Equine infectious anemia.

Research facilities, prevention of infection, §2-40-829.

Rice certification act.

Exemption from act, §2-15-207.

RETIREMENT.**Poultry.**

Poultry and egg grading program.

Retirement provisions for employees, §2-33-302.

RICE.**Certification act**, §§2-15-201 to 2-15-208.

Arkansas rice certification act.

Subchapter known and cites as, §2-15-201.

Characteristics of commercial impact.

Defined, §2-15-202.

Notice of violations, §2-15-206.

Powers and duties of state plant board, §2-15-204.

Restrictions on selling, planting, producing, transporting, §2-15-203.

Violations, notice, relief, §2-15-206.

Penalties imposed, §2-15-208.

Civil penalties, §2-15-208.

Definitions, §2-15-202.

Powers and duties of state plant board, §2-15-204.

Research, exemption from act, §2-15-207.

RICE —Cont'd**Certification act** —Cont'd

Scientific review board.

Appointment by plant board, duties, §2-15-205.

Violations, notice, relief, §2-15-206.

Penalties imposed, §2-15-208.

Records.

Research and promotion act.

Buyers, §2-20-508.

Reports.

Research and promotion act.

Buyers, §2-20-508.

Research and promotion act.

Advertising.

Research, market development and advertising program.

Generally, §2-20-510.

Applicability of provisions.

Exception, §2-20-503.

Assessments.

Grown rice, §2-20-507.

Board.

Composition, §2-20-505.

Created, §2-20-505.

Duties, §2-20-505.

Members.

Qualifications, §2-20-505.

Terms, §2-20-505.

Officers, §2-20-505.

Resident agent, §2-20-505.

Rules and regulations.

Authority to establish, §2-20-505.

Buyers.

Applicability of provisions.

Exception, §2-20-503.

Reports.

Failure to file, §2-20-504.

Citation of act, §2-20-501.

Civil penalties.

Injunctions, §2-20-504.

Funds.

Civil penalties.

Collection, §2-20-504.

Legislative intent, §2-20-502.

Purpose, §2-20-502.

Records.

Buyers, §2-20-508.

Reports.

Buyers, §2-20-508.

Research program.

Board.

Generally, §2-20-510.

Short title, §2-20-501.

Violations of provisions.

Civil penalty.

Collection, §2-20-504.

RICE —Cont'd**Research and promotion act —Cont'd**

Violations of provisions —Cont'd

Criminal offenses.

Fines, §2-20-504.

RICE CERTIFICATION ACT,

§§2-15-201 to 2-15-208.

RIGHT OF ENTRY.**Boll weevil suppression eradication.**

Plant board, §2-16-607.

Catfish promotion board.

Inspection of assessment record,

§2-9-109.

RUNNING AT LARGE.**Feral hogs, §2-38-504.****Livestock, §§2-38-101 to 2-38-504.****S****SALES.****Cattle.**

Bill of sale.

Required, §2-35-212.

Fairs.

Immoral, lewd, etc., items, §2-36-103.

Fertilizers.

Blending or bulk storage facilities.

Sale of fertilizers manufactured at
unlicensed facilities.

Prohibited, §2-19-203.

Exempted transactions, §2-19-204.

Penalties.

Selling in violation of act, §2-19-201.

Stop sale order, §2-19-211.

Unregistered fertilizers.

Sale prohibited, §2-19-203.

Goats.

Bill of sale.

Required, §2-35-212.

Hogs.

Bill of sale.

Required, §2-35-212.

Livestock.

Bill of sale.

Required, §2-35-212.

Impoundment of animals running at
large.Sale of unclaimed animals,
§2-38-407.**Livestock shows.**

Immoral, lewd, etc., items, §2-36-103.

Sheep.

Bill of sale.

Required, §2-35-212.

SAMPLES.**Soil amendment, §2-19-405.****SEAFOOD.****Catfish promotion board, §§2-9-101 to 2-9-112.****SEARCHES AND SEIZURES.****Agriculture.**

Pests.

Plant disease, weeds or prohibited
plants brought into state
illegally, §2-16-209.**Commercial feeds.**Condemnation and confiscation,
§2-37-112.**Pest control.**Insect pests, weeds or prohibited
plants, §2-16-209.**SEEDS.****Actions.**

Arbitration of defective seed claims.

Investigation and report for
arbitration committee.

Findings as evidence, §2-23-107.

Prerequisite to legal action,
§2-23-102.Notice not typed on container or
label.Compliance with section not
required, §2-23-102.**Advertising.**

False advertising, §2-18-102.

Fees for promotion and advertising,
§2-18-105.**Aflatoxin.**

Monitoring, §2-18-109.

Rulemaking regarding, §2-18-111.

Sampling methods for monitoring,
§2-18-110.**Answers.**

Arbitration of defective seed claims.

Answers to complaints against
dealer, §2-23-102.**Arbitration of defective seed claims,
§§2-23-101 to 2-23-110.**Acceptance of arbitration committee's
recommendations.

Notice, §2-23-110.

Actions.

Evidence.

Arbitration committee's findings
as evidence, §2-23-107.Prerequisites to legal action,
§2-23-102.Notice not typed on container or
label.Compliance with section not
required, §2-23-102.Answers to complaints against dealers,
§2-23-102.

SEEDS —Cont'd**Arbitration of defective seed claims —Cont'd**

Arbitration committee.

Appointment.

Director of plant board, §2-23-104.

Chairperson.

Calling into session, §2-23-106.

Duty to conduct meeting and deliberations, §2-23-104.

Election, §2-23-104.

Composition, §2-23-104.

Damages.

Recommendation of money damages, §2-23-105.

Director of plant board.

Appointment, §2-23-104.

Calling into session, §2-23-106.

Secretary, §2-23-104.

Evidence.

Findings as evidence, §2-23-107.

Ex officio members, §2-23-104.

Expenses.

Reimbursement, §2-23-104.

Governor.

Members and alternatives confirmed by, §2-23-104.

Hearings.

Informal hearings, §2-23-106.

Powers, §2-23-108.

Investigations, §2-23-107.

Powers, §2-23-108.

Meetings, §2-23-104.

Calling into session, §2-23-106.

Members, §2-23-104.

Number of members, §2-23-104.

Powers.

Investigative powers, §2-23-108.

Purposes, §2-23-105.

Recommendations for members.

Recommending organization to submit, §2-23-104.

Records.

Activities of committee, §2-23-109.

Duties of secretary, §2-23-104.

Reports.

Activities of committee.

Filing with plant board, §2-23-109.

Investigations, §2-23-107.

Secretary.

Director of plant board, §2-23-104.

Duty to keep accurate and correct records, §2-23-104.

Terms of members, §2-23-104.

Complaints against dealers.

Filing fees, §2-23-102.

SEEDS —Cont'd**Arbitration of defective seed claims —Cont'd**

Complaints against dealers —Cont'd

Sworn complaint as prerequisite to legal action, §2-23-102.

Notice not printed or typed on container or label.

Compliance not required, §2-23-102.

Damages.

Arbitration committee.

Recommendation of money damages, §2-23-105.

Definitions, §2-23-101.

Evidence.

Arbitration committee.

Findings as evidence, §2-23-107.

Fees.

Complaints against dealers.

Filing fee, §2-23-102.

Investigations requested by dealers.

Filing fees, §2-23-103.

Forms.

Notice.

Of mandatory arbitration, §2-23-102.

Governor.

Arbitration committee.

Members and alternatives confirmed by, §2-23-104.

Hearings.

Arbitration committee.

Informal hearings, §2-23-106.

Powers, §2-23-108.

Investigations.

Arbitration committee, §2-23-107.

Powers, §2-23-108.

Request by dealer against whom suit brought, §2-23-103.

Filing fee, §2-23-103.

Requirements, §2-23-103.

Notice.

Acceptance or rejection of arbitration committee's recommendations, §2-23-110.

Arbitration committee.

Informal hearings, §2-23-108.

Prerequisites to legal action.

Form, §2-23-102.

Typed on seed container or label, §2-23-102.

Prerequisites to legal action, §2-23-102.

Notice not typed on container or label.

Compliance with section not required, §2-23-102.

SEEDS —Cont'd**Arbitration of defective seed claims —Cont'd**

Records.

Arbitration committee.

Activities of committee, §2-23-109.

Duty of secretary, §2-23-104.

Rejection of arbitration committee's recommendations.

Notice, §2-23-110.

Reports.

Arbitration committee.

Activities of committee.

Filing with plant board,
§2-23-109.

Investigations, §2-23-107.

Time.

Answers.

To complaints against dealers,
§2-23-102.Complaints against dealers,
§2-23-102.Notice of acceptance or rejection of
arbitration committee's
recommendations, §2-23-110.**Board.**

Arbitration of defective seed claims.

Answer to complaint against dealer.

Filing with director, §2-23-102.

Arbitration committee.

Calling into session by director,
§2-23-106.

Director as secretary, §2-23-104.

Reports filed with board,
§2-23-109.

Board defined, §2-23-101.

Complaints against dealers.

Filing with director, §2-23-102.

Director defined, §2-23-101.

Investigations requested by dealers.

Referral by director to arbitration
committee, §2-23-103.

Certification by board, §2-18-103.

Cooperation with other agencies,
§2-18-108.

Defined, §2-18-101.

Investigations, §2-18-103.

Rules and regulations.

Promulgation by board, §2-18-104.

State departments and agencies.

Cooperation with other agencies,
§2-18-108.**Certification.**

Fees, §2-18-105.

Improper use of term "certified,"
§2-18-107.Offenses relating to certification,
§2-18-102.**SEEDS —Cont'd****Certification —Cont'd**

Revocation of certificate, §2-18-102.

Complaints.

Arbitration of defective seed claims.

Complaints against dealers.

Compliance with section not
required where notice not
typed on container or label,
§2-23-102.

Filing fee, §2-23-102.

Prerequisite to legal action,
§2-23-102.**Cotton.**

Gins.

Disposition of seeds, §2-20-203.

Damages.

Arbitration of defective seed claims.

Arbitration committee.

Recommendation of money
damages, §2-23-105.**Definitions, §2-18-101.**Arbitration of defective seed claims,
§2-23-101.**Evidence.**

Arbitration of defective seed claims.

Arbitration committee.

Investigation and report.

Findings as evidence, §2-23-107.

Fees.

Arbitration of defective seed claims.

Complaints against dealers.

Filing fees, §2-23-102.

Investigations requested by dealers.

Filing fee, §2-23-103.

Inspection, certification, promotion
and advertising, §2-18-105.**Forms.**

Arbitration of defective seed claims.

Notice of mandatory arbitration,
§2-23-102.**Ginseng.**General provisions, §§2-20-701 to
2-20-705.**Hearings.**

Arbitration committee.

Informal hearing, §2-23-106.

Investigative powers, §2-23-108.

Inspections.

Certificates of inspection, §2-18-106.

Fees, §2-18-105.

Investigations.

Arbitration of defective seed claims.

Arbitration committee, §2-23-107.

Powers, §2-23-108.

Requests by dealers, §2-23-103.

Filing fee, §2-23-103.

Plant board, §2-18-103.

SEEDS —Cont'd**Notice.**

- Arbitration of defective seed claims.
 - Acceptance or rejection of arbitration committee's recommendation, §2-23-110.
- Mandatory arbitration.
 - Prerequisite to legal action, §2-23-102.
 - Form, §2-23-102.

Penalties.

- False advertising, §2-18-102.

Person.

- Defined, §2-18-101.

Records.

- Arbitration of defective seed claims.
 - Arbitration committee.
 - Activities of committee, §2-23-109.

Registration.

- Improper use of term "registered," §2-18-107.

Reports.

- Arbitration of defective seed claims.
 - Arbitration committee.
 - Activities of committee.
 - Filing of report with plant board, §2-23-109.
 - Investigation and report, §2-23-107.

Rules and regulations.

- Board.
 - Promulgation by board, §2-18-104.

State departments and agencies.

- Cooperation of board with other agencies, §2-18-108.

Time.

- Arbitration of defective seed claims.
 - Answers to complaints against dealers, §2-23-102.
 - Complaints against dealers.
 - Filing, §2-23-102.
 - Notice of acceptance or rejection of arbitration committee's recommendation, §2-23-110.

United States.

- Cooperation of board with other agencies, §2-18-108.

SENTENCING.**Hogs.**

- Release of feral hogs into the wild, §2-38-504.

SERVICE OF PROCESS.**Grain.**

- Receiver for grains stored in public warehouses.
 - Notice of hearing on petition filed by commissioner.
 - Delay in service, §2-17-404.

SERVICE OF PROCESS —Cont'd**Wheat promotion act.**

- Wheat promotion board.
 - Resident agent for service, §2-20-610.

SHEEP.**Brands and marks.**

- General provisions, §§2-34-101 to 2-34-213.

Carriers.

- Transfer record.
 - Receiving without copy, §2-35-209.

Penalties.

- Transfer record.
 - Violations of provisions, §2-35-203.

Perjury.

- Transfer records, §2-35-207.

Sales.

- Bill of sale.
 - Required, §2-35-212.

Transportation.

- Animals named in act include those dead or alive, §2-35-201.

Transfer record.

- Acknowledgments.
 - Fees of persons taking acknowledgment on record, §2-35-208.
 - Form, §2-35-205.
 - Inspection, §2-35-210.
 - Penalties, §2-35-203.
 - Perjury.
 - Applicability to records, §2-35-207.
 - Receiving livestock without copy, §2-35-209.

SHERIFFS.**Livestock.**

- Brands and marks.
 - State brand book.
 - Distribution to sheriffs, §2-34-210.
- Running at large.
 - Impoundment of animals running at large.
 - Delivery to enclosure, §2-38-404.
 - Notice of delinquency in payment.
 - Service by sheriff, §2-38-121.

SOIL AMENDMENT.**Administration of act.**

- Authority of plant board, §2-19-404.

Adulterated.

- Defined, §2-19-402.

Bulk.

- Defined, §2-19-402.

Citation of act, §2-19-401.**Claims.**

- Plant board may require proof of claims, §2-19-407.

SOIL AMENDMENT —Cont'd**Definitions**, §2-19-402.**Deposit of money received**, §2-19-414.**Distribute**.

Defined, §2-19-402.

Distributor.

Defined, §2-19-402.

Fees.

Inspection fees.

Payment by registrant, §2-19-410.

Ingredients.

Active ingredient.

Defined, §2-19-402.

Inert ingredient.

Defined, §2-19-402.

Injunctions.

Violations of provisions, §2-19-413.

Inspections.

Authorized, §2-19-405.

Fees.

Payment to plant board, §2-19-410.

Labeling.

Defined, §2-19-402.

Labels.

Approval by board, §2-19-407.

Defined, §2-19-402.

Requirements, §2-19-407.

Manufacturers.

Defined, §2-19-402.

Misbranded.

Defined, §2-19-402.

Name.

Defined, §2-19-402.

Orders.Stop-sale, use or removal orders,
§2-19-412.**Percentage**.

Defined, §2-19-402.

Person.

Defined, §2-19-402.

Plant board.

Administration of act, §2-19-404.

Claims.

Proof of claims, §2-19-407.

Inspections.

Authorized, §2-19-405.

Labels.

Approval of labels, §2-19-407.

Orders.

Stop-sale, use or removal order.

Authorized, §2-19-412.

Remittance of moneys received,
§2-19-414.

Rules and regulations.

Adoption, §2-19-406.

Stop-sale orders.

Authorized, §2-19-412.

Prohibited acts, §2-19-411.**SOIL AMENDMENT —Cont'd****Registrants**.

Defined, §2-19-402.

Registration.Refusal of plant board to register,
§2-19-409.

Revocation, §2-19-409.

Soil amendment products, §2-19-408.

Reports.

Sales reports.

Filing, §2-19-410.

Rules and regulations.

Adoption by plant board, §2-19-406.

Samples.

Authorized, §2-19-405.

Short title of act, §2-19-401.**Soil amendment products**.

Registration, §2-19-408.

Refusal of board to register,
§2-19-409.**Title**.

Short title of act, §2-19-401.

Violations.

Injunctions, §2-19-413.

Misdemeanors, §2-19-403.

Prohibited acts constituting, §2-19-411.

SORGHUM.**Corn and grain sorghum promotion**,

§§2-20-801 to 2-20-806.

SOYBEANS.**Confidentiality of information**.

Promotion.

Information obtained from books,
records or reports required,
§2-20-407.**Definitions**.

Promotion, §2-20-402.

Deposits.

Promotion assessment, §2-20-406.

Initiative and referendum.

Promotion.

Assessments, §2-20-406.

Inspections.

Promotion.

Books and records, §2-20-407.

Promotion.

Administration of chapter, §2-20-409.

Assessments.

Delinquent assessments.

Collection, §2-20-403.

Deposit of proceeds, §2-20-406.

Failure to pay.

Penalty, §2-20-403.

Grown soybeans, §2-20-406.

Imposed, §2-20-406.

SOYBEANS —Cont'd**Promotion —Cont'd****Assessments —Cont'd****Injunctive relief.**

Persons owing assessment or penalties.

Enjoining person from operating business, §2-20-403.

Inspection of premises.

Refusal by persons required to pay assessment.

Misdemeanor, §2-20-403.

Rate, §2-20-406.

Referendum, §2-20-406.

Refunds to producers, §2-20-408.

Application, §2-20-408.

Extent, §2-20-408.

Refusal to allow full inspection of premises.

Persons required to pay assessment, §2-20-403.

Remittance, §2-20-406.

Reports.

Persons responsible for collecting, §2-20-407.

Board.

Administration of chapter, §2-20-409.

Assessments.

Power, §2-20-405.

Creation, §2-20-404.

Office.

Principal place of office, §2-20-404.

Organization, §2-20-404.

Powers, §§2-20-405, 2-20-409.

Rules and regulations, §2-20-404.

Selection of members, §2-20-404.

Terms of office, §2-20-404.

Use of funds collected.

Restriction, §2-20-405.

Confidentiality of information.

Books, records or reports required to be filed, §2-20-407.

Definitions, §2-20-402.**Deposits.**

Assessments, §2-20-406.

Inspection of premises.

Books and records, §2-20-407.

Intent of act, §2-20-401.

Power of board, §2-20-405.

Purpose of act, §2-20-401.

Records.

Inspection of books and records, §2-20-407.

Referendum.

Assessments, §2-20-406.

SOYBEANS —Cont'd**Promotion —Cont'd****Reports.****Assessments.**

Persons responsible for collecting, §2-20-407.

Use of funds, §2-20-409.

Records.**Promotion.**

Inspection of books and records, §2-20-407.

Reports.**Promotion.****Assessments.**

Persons responsible for collecting, §2-20-407.

Rules and regulations.

Promotion board, §2-20-404.

STATE DEPARTMENTS AND AGENCIES.**Livestock and poultry commission.**

Cooperation with state agencies, §2-33-305.

Livestock marketing.

Cooperation with state agencies, §2-33-205.

Seeds.

Cooperation of board with other agencies, §2-18-108.

STATE POLICE.**Livestock.**

Running at large.

Impoundment of animals running at large.

Delivery to enclosure, §2-38-404.

STOCK AND STOCKHOLDERS.**Agricultural cooperative associations.****Bylaws.**

Quorum for stockholders' meetings.

Amending bylaws, §2-2-110.

Certificates of stock.

Transferability, §2-2-107.

Common stock.

Amount owned, §2-2-114.

Matters referred to entire membership, §2-2-115.

Preferred stock.

Issuance, §2-2-114.

Redemption, §2-2-114.

Voting, §2-2-114.

Cooperative marketing associations.

Amount of common stock allowed, §2-2-417.

Issuance of common stock, §2-2-407.

Issuance of preferred stock, §2-2-417.

STOCK AND STOCKHOLDERS

—Cont'd

Cooperative marketing associations

—Cont'd

Matters referred to stockholders,
§2-2-418.

Payment required, §2-2-417.

Purchase of common stock by
association, §2-2-417.Purchase of stock in another
corporation or association,
§2-2-421.

Transfer of common stock, §2-2-417.

Votes, §2-2-417.

STRAWBERRIES.**Labeling of fruits and vegetables for
interstate shipment.**Products to which act applies,
§2-20-303.**SUBPOENAS.****Livestock and poultry commission.**Disease or pest control and
eradication.

Power of subpoena, §2-40-203.

Pesticides.

Plant board.

Power of plant board, §2-16-415.

SWINE.**Feeder pig and feeder calf grading
program, §2-33-204.****T****TAXATION.****Agricultural cooperative
associations.**

Compensation tax act.

Associations subject to, §2-2-123.

Agriculture.Biotechnology development and
training.

Tax credits, §§2-8-103 to 2-8-108.

Cooperative marketing associations.Exemption from franchise or license
tax, §2-2-427.**TESTS.****Pesticides.**Full description of tests given and
results, §2-16-407.**THISTLE CONTROL AND
ERADICATION.****Assessments.**

Annual assessment, §2-16-801.

Interagency cooperation, §2-16-802.**TICK CONTROL.****Cost-sharing program, §2-40-902.****TICK CONTROL —Cont'd
Counties.**Agricultural extension service.
Assistance in receiving and
processing applications,
§2-40-903.**Dipping.**

Arsenical dip, §2-40-904.

Dipping vats, §2-40-905.

Legislative declaration.

Purpose of provisions, §2-40-901.

Purpose of provisions, §2-40-901.**Rules and regulations, §2-40-903.****Stock range rider, §2-40-906.**

Appointment, §2-40-906.

Compensation, §2-40-906.

TIME.**Grain.**Receiver for grain stored in public
warehouse.

Filing claims, §2-17-410.

Seeds.

Arbitration of defective seed claims.

Answers to complaints against
dealers, §2-23-102.

Complaints against dealers.

Filing, §2-23-102.

Notice of acceptance or rejection of
arbitration committee's
recommendation, §2-23-110.**TOMATOES.****Labeling of fruits and vegetables for
interstate shipment.**Products to which act applies,
§2-20-303.**TRADE SECRETS.****Pesticides.**

Protection, §2-16-418.

TRANSPORTATION.**Agriculture.**Sale, shipment or disposal of products
or plants.

Certificate of inspection, §2-16-210.

Plant diseases.Transportation into state prohibited,
§2-16-209.**Weeds.**

Transportation into state, §2-16-209.

TREES AND TIMBER.**Cedar trees.**Compensation for trees destroyed,
§2-16-101.Presentation of claims to county
court, §2-16-101.**Claims for destroyed trees.**Presentation to county court,
§2-16-101.

TREES AND TIMBER —Cont'd

Compensation for trees destroyed,
§2-16-101.

Pear trees.

Compensation for trees destroyed,
§2-16-101.

Presentation of claims to county
court, §2-16-101.

Plant board.

Compensation for trees destroyed by
order and direction of board,
§2-16-101.

TRESPASS.**Feral hogs.**

Hunting, §2-38-502.

TURF GRASS.

Certification by plant board,
§2-16-109.

U**UNITED STATES.****Agriculture.**

Alligator weed.

Plant board.

Agreements to hold United States
free from claims, §2-16-103.

Corps of engineers.

Alligator weed.

Agreements to hold corps of
engineers free claim,
§2-16-103.

Grading of products and containers.

Cooperation of board with United
States, §2-20-106.

Federal standards.

Adoption, §2-20-106.

Labeling of fruits and vegetables for
interstate shipment.

United States grades.

Adoption, §2-20-303.

Livestock and poultry commission.

Agreements with federal department,
§2-33-306.

Cooperation with federal agencies,
§2-33-305.

Livestock marketing.

Cooperation with federal agencies,
§2-33-205.

Pesticides.

Plant board may cooperate with
federal government, §2-16-
416.

UNITED STATES —Cont'd**Seeds.**

Cooperation of board with other
agencies, §2-18-108.

Weeds.

Alligator weed.

Plant board.

Agreements to free United States
from claims, §2-16-103.

UNIVERSITY OF ARKANSAS.**Agricultural experiment stations.**

Director.

Fire ant advisory board reports,
§2-16-705.

Fire ants.

Advisory board reports, §2-16-
705.

Research money, §2-16-701.

Cooperative extension services.

Fire ant poison cost sharing program.
Duties, §2-16-105.

V**VACCINATION OF ANIMALS.****Anthrax spore vaccine.**

Sale.

Advice and consent of state
veterinarian, §2-40-108.

VEGETABLES.

**Labeling of fruits and vegetables for
interstate shipment, §§2-20-301 to
2-20-310.**

VENUE.**Commercial feeds.**

Appeal of actions, orders or rulings of
board, §2-37-113.

Grain.

Public grain warehouses.

Suspension, cancellation or
revocation of license, §2-17-215.

VETERINARIANS.**State veterinarian.**

Anthrax spore vaccine.

Sales.

Advice and consent of state
veterinarian, §2-40-108.

Blood test training program.

Design and conduct of program,
§2-40-205.

Inspection of livestock markets,
§2-40-208.

Livestock markets.

Inspection, §2-40-208.

W**WAREHOUSES.****Cooperative marketing associations.**

Interest in other corporations or associations, §2-2-423.

Grain.

Receivers for grain stored in public warehouses, §§2-17-401 to 2-17-416.

Receivers.**Grain.**

Receiver for grain stored in public warehouses, §§2-17-401 to 2-17-416.

WARRANTS.**Boll weevil suppression eradication.**

Right of entry.
Issuance by judge, §2-16-607.

WATERS AND WATERCOURSES.**Irrigation companies.**

Discharge of center pivot irrigation water onto highways, §2-1-101.

WEEDS.**Alligator weed.**

Plant board.
Agreements to hold United States free from claims for operations to control alligator weed, §2-16-103.

Johnson grass control and eradication, §§2-16-501 to 2-16-511.**Noxious weeds.**

Transportation into state.
Prohibited, §2-16-209.

Transportation into state.

Prohibited, §2-16-209.

United States.

Alligator weed.
Agreements to hold United States free from claims, §2-16-103.

WEIGHTS AND MEASURES.**Catfish processor fair practices.**

Weighing catfish at time of delivery to processor, §2-6-107.
Scales used to weigh, §2-6-107.

Cotton.

Gins.
Failure to keep or exhibit books, §2-20-208.
Record of weights required, §2-20-207.

Grain.

Public grain warehouses.
Test of scales, §2-17-235.

WHEAT PROMOTION ACT.**Agents.**

Wheat promotion board.
Resident agent for service of process, §2-20-610.

Applicability of provisions, §2-20-602.**Assessments.**

Grown wheat, §2-20-606.
Refunds to producers, §2-20-608.

Board.

Composition, §2-20-604.
Created, §2-20-604.
Duties, §2-20-604.
Members.
Qualifications, §2-20-604.
Terms, §2-20-604.
Officers, §2-20-604.
Referendum in each county, §2-20-605.
Resident agent for service of process, §2-20-610.
Rules and regulations.
Authority to establish, §2-20-604.

Buyers.

Applicability of provisions, §2-20-602.
Records and other documentation, §2-20-607.

Elections.

Referendum in each county, §2-20-605.

Funds.

Civil penalties.
Collection, §2-20-603.
Criminal penalties.
Fines, §2-20-603.
Referenda.
Reimbursement for costs of holding referenda, §2-20-609.
Research program.
Use of funds, §2-20-609.

Legislative intent, §2-20-601.**Purpose, §2-20-601.****Records.**

Buyers, §2-20-607.

Reports.

Buyers, §2-20-607.

Research program.

Funds.
Use of funds, §2-20-609.

Resident agent of wheat promotion board, §2-20-610.**Rules and regulations.**

Board.
Authority to establish, §2-20-604.

Service of process.

Wheat promotion board.
Resident agent for service, §2-20-610.

Violations of provisions.

Civil penalties, §2-20-603.

WHEAT PROMOTION ACT —Cont'd**Violations of provisions —Cont'd**

Criminal penalties, §2-20-603.

Injunctions, §2-20-603.

WILD BOARS.**Feral hogs**, §§2-38-501 to 2-38-504.**WITNESSES.****Agriculture.**

Emergency plant act.

Power of board to summon
witnesses, §2-16-306.**Fences.**Testimony of disinterested
householders, §2-39-107.**WRITS.****Livestock.**

Drovers.

Writ of detention.

Form, §2-34-304.

Y**YOUNG AND BEGINNING FARMER
ADVISORY BOARD**, §§2-1-201 to

2-1-206.

**Ancillary committee of outside
representatives**, §2-1-206.**Established**, §2-1-201.**Meetings**, §2-1-205.**Members**, §2-1-203.

Qualifications, §2-1-202.

Officers, §2-1-205.**Powers and duties**, §2-1-204.

Index to Title 3

A

ACCOMPLICES AND ACCESSORIES.

Alcoholic beverages.

- Prohibited acts and practices.
- Accessories guilty as principals, §3-3-101.

ACTIONS.

Alcoholic beverages.

- Wholesalers' protection from arbitrary actions of suppliers.
- Civil action for violations, §3-5-1106.

ADMINISTRATIVE PROCEDURE.

Alcoholic beverages.

- Beer.
- Retailers.
- Licenses.
- Appeals governed by administrative procedure act, §3-5-306.

ADVERTISING.

Alcoholic beverages.

- Materials displayed by franchisee of racing commission, §3-3-212.
- Nonresident beer sellers, §3-5-1305.
- Private clubs, §3-9-226.

Private clubs.

- Alcoholic beverages, §3-9-226.

AGENTS.

Alcoholic beverages.

- Enforcement agents.
- Authority, §3-2-210.

ALCOHOLIC BEVERAGES.

Accomplices and accessories.

- Prohibited acts and practices.
- Accessories guilty as principals, §3-3-101.

Actions.

- Wholesalers' protection from arbitrary actions of suppliers.
- Civil action for violations, §3-5-1106.

Administrative personnel.

- Beer and light wine.
- Employment of additional personnel to enforce subchapter, §3-5-225.

ALCOHOLIC BEVERAGES —Cont'd

Administrative procedure.

- Beer.
- Retailers.
- Licenses.
- Appeals governed by administrative procedure act, §3-5-306.

Advertising.

- Materials displayed by franchisee of racing commission, §3-3-212.
- Private clubs, §3-9-226.

Agents.

- Enforcement agents.
- Authority, §3-2-210.

Annexation of dry township into wet city or town.

- Local option election, §§3-8-501, 3-8-502.

Antiseptic preparations.

- Exempted products, §3-1-103.

Appeals.

- Beer.
- Retailers.
- Licenses, §3-5-306.
- Board of alcoholic beverage control.
- Conduct of appeal before board, §3-2-215.
- Enforcement division.
- Review of, §3-2-201.
- Licenses.
- Denial, suspension or revocation.
- Appeal or review by board, §§3-2-213, 3-2-214.
- Licenses.
- Denial, suspension or revocation, §3-2-216.
- Board of alcoholic beverage control.
- Appeal to board, §3-2-213.
- Review by board on own motion, §3-2-214.

Local option elections.

- 1935 act proceedings.
- Contests of elections, §3-8-309.
- Initiated act proceedings.
- Calling of election, §3-8-205.

On-premises consumption.

- Sunday sales.
- Permits.
- Suspension, cancellation or revocation, §3-9-409.

ALCOHOLIC BEVERAGES —Cont'd**Appeals —Cont'd**

- Permit applications, §3-4-213.
- Wholesale dealers and distributors.
 - Request to change wholesalers, §3-2-406.

Applications.

- Permits, §§3-4-208 to 3-4-213, 3-4-219.
- Wine.
 - Incentive grants, §3-5-905.
 - Subsidies, §3-5-1005.

Arbitration.

- Wholesalers' protection from arbitrary actions of suppliers.
- Prohibited acts of supplier.
 - Compensation upon supplier's violation, §3-5-1108.

Attorneys' fees.

- Wholesalers' protection from arbitrary actions of suppliers.
- Civil action for violations, §3-5-1106.

Auctions.

- Charitable auctions.
- Wine, §§3-5-1501 to 3-5-1507.

Beer.

- Additional administrative personnel.
- Employment, §3-5-225.
- Appeals.
 - Retailers.
 - Licenses, §3-5-306.

- Brewery.
 - Defined, §3-5-202.

- Consumer.
 - Defined, §3-5-202.
- Definitions, §3-5-202.
- Distribution.
 - Label submission to division, §3-2-409.

- Distribution areas for beer.
 - Notification of distribution areas, §3-5-103.

- Distributor.
 - Defined, §3-5-202.

- Festival beer permits, §3-5-105.

- Fines.
 - Miscellaneous prohibited practices, §3-5-221.

- Fire, wreck or casualty.
 - Labeling of beer involved in fire, wreck or casualty, §3-4-104.

- Funds.
 - Disposition, §3-5-224.

- Home-brewed.
 - Defined, §3-5-202.
 - Exemption from privilege tax, §3-5-205.

ALCOHOLIC BEVERAGES —Cont'd**Beer —Cont'd**

- Intoxicating liquor.
 - Defined, §3-5-202.
- Kegs.
 - Identification tags or label.
 - Attaching for off-premises consumption, §3-5-227.
- Labels.
 - Sale in original, labeled containers, §3-5-220.

Legislative declaration.

- Purpose of subchapter, §3-5-201.

Licenses.

- Federal license.
 - Sale of liquor or beer on federal license without state license, §3-3-215.

- Retail dealers, §§3-5-301 to 3-5-307.

Local option elections, §3-8-401.**Misdemeanors.**

- Miscellaneous prohibited practices, §3-5-221.

Retailers.

- Nudity on premises, §3-5-222.
- Sale or manufacture without state permit, §3-5-210.

Municipal corporations.

- Permits.
 - Generally, §3-5-211.

- Retailers.
 - Permits, §3-5-212.
 - Regulation, §3-5-213.

Native breweries, §§3-5-1401 to 3-5-1414.**Nonresident beer sellers' permits, §§3-5-1301 to 3-5-1310.****Notice.**

- Distribution areas for beer, §3-5-103.

Retailers.

- Licenses.
 - Applications, §3-5-304.

Nudity on premises.

- Retail dealers.
 - Penalty, §3-5-222.

On-premises consumption.

- Sunday sales.
 - Permits, §3-9-411.

Original bottles or packaging.

- Sale in original, labeled containers, §3-5-220.

Penalties, §3-5-203.

- Miscellaneous prohibited practices, §3-5-221.

ALCOHOLIC BEVERAGES —Cont'd**Beer —Cont'd**

Penalties —Cont'd

Retailers.

Nudity on premises, §3-5-222.

Sale or manufacture without state permit, §3-5-210.

Transportation.

Duplicate bills of lading.

Noncompliance with requirements, §3-5-218.

Permits.

Dancing privileges.

Inspection fee, §3-5-209.

Duration of state permits, §3-5-208.

Fees.

Dancing privileges.

Inspection fee, §3-5-209.

Retailers' permits.

Counties and municipalities, §3-5-212.

State permits.

Privilege tax, §§3-5-205, 3-5-208.

Transfer of permit inspection fee, §3-5-209.

Issuance of state permit, §3-5-206.

Local permits.

Required, §3-5-211.

Retailers' permits, §3-5-212.

Misdemeanors.

Sell or manufacture without state permit, §3-5-210.

Oath by applicant, §3-5-214.

Retailers.

Local permits, §3-5-212.

Qualifications, §3-5-215.

Scope of state permit, §3-5-207.

Transfer of permit, §3-5-209.

Person.

Defined, §3-5-202.

Privilege tax, §3-5-205.

Time for payment, §3-5-208.

Privilege to manufacture, sell, etc., §3-5-204.

Prohibited acts and practices.

Enumeration of miscellaneous prohibited practices, §3-5-221.

Purpose of subchapter, §3-5-201.

Records, §3-5-219.

Registration of kegs.

Off-premises consumption, §3-5-227.

Reports, §3-5-219.

Retail dealers, §3-5-213.

Defined, §3-5-202.

Licenses.

Applications.

Appeals, §3-5-306.

Concealment of facts, §3-5-303.

ALCOHOLIC BEVERAGES —Cont'd**Beer —Cont'd**

Retail dealers —Cont'd

Licenses —Cont'd

Applications —Cont'd

Misstatement of facts, §3-5-303.

Notice requirements, §3-5-304.

Protest, §3-5-305.

Qualifications of applicant, §3-5-302.

Cumulative subchapter, §3-5-301.

Prohibited acts by licensees, §3-5-307.

Protest.

Applications, §3-5-305.

Qualifications of applicant, §3-5-302.

Revocation.

Misstatement or concealment of facts in license applications, §3-5-303.

Subchapter cumulative, §3-5-301.

Nudity on premises.

Penalty, §3-5-222.

Prohibited acts by licensees generally, §3-5-307.

Qualifications of retail permittees, §3-5-215.

Taxation, §3-4-202.

Rules and regulations.

Defined, §3-5-202.

Excise taxes, §3-7-404.

Retailers.

Nudity on premises, §3-5-222.

Regulation by municipal corporations, §3-5-213.

Sales.

Tax on sales.

Rate of tax, §3-7-104.

Storage, §3-5-216.

Sunday beer and wine permits, §§3-9-501 to 3-9-507.

Taxation.

Actions to recover taxes, §3-5-223.

Payment of tax, §§3-7-105, 3-7-401.

Penalty for failure to timely pay, §3-7-403.

Rules and regulations, §3-7-404.

Penalties for noncompliance, §3-7-403.

Privilege tax, §3-5-205.

Time for payment, §3-5-208.

Reports, §§3-7-105, 3-7-401.

Penalty for failure to file timely report, §3-7-403.

Rules and regulations, §3-7-404.

Rules and regulations, §3-7-404.

ALCOHOLIC BEVERAGES —Cont'd**Beer —Cont'd**

Taxation —Cont'd

Sale of beer.

Rate of tax, §3-7-104.

Stamp no longer required, §3-7-105.

Transportation, §3-5-217.

Bills of lading.

Duplicate bills, §3-5-218.

Warehouse.

Defined, §3-5-202.

Wholesale dealers and distributors.

Defined, §3-5-202.

Sale of malt liquors containing more than 5% alcohol, §3-5-101.

Wholesalers' protection from arbitrary actions of suppliers, §§3-5-1101 to 3-5-1111.

Beer festival permits, §3-5-105.**Block.**

Defined, §3-1-102.

Board of alcoholic beverage control.

Appeals.

Conduct of appeal before board, §3-2-215.

Enforcement division.

Review of, §3-2-201.

Licenses.

Denial, suspension or revocation.

Appeal to board, §3-2-213.

Review by board on own motion, §3-2-214.

Bribery.

Solicitation or acceptance of bribe prohibited, §3-2-208.

Chairman, §3-2-201.

Compensation, §3-2-201.

Composition, §3-2-201.

Creation, §3-2-201.

Director.

Seal of director, §3-2-204.

Authentication of records, §3-2-204.

Division of alcoholic beverage control.

Management by board, §3-2-201.

Expenses, §3-2-201.

Hearings.

Conduct of hearing on appeal before board, §3-2-215.

Licenses.

Denial, suspension or revocation.

Appeal to board, §3-2-213.

Review by board on own motion, §3-2-214.

Majority vote required, §3-2-201.

Meetings, §3-2-201.

Members, §3-2-201.

ALCOHOLIC BEVERAGES —Cont'd**Board of alcoholic beverage control —Cont'd**

Oaths.

Conducting or hearing appeals, §3-2-215.

Personnel, §3-2-207.

Personnel.

Oath of personnel, §3-2-207.

Qualifications, §3-2-207.

Powers and duties, §3-2-201.

Private clubs.

Rules and regulations, §3-9-225.

Responsible permittee programs

generally, §§3-4-801 to 3-4-807.

Review of enforcement division, §3-2-201.

Rules and regulations.

Nudity on premises, §§3-5-222, 3-9-101.

On-premises consumption.

Generally, §3-9-205.

Private clubs.

Establishment of rules and regulations, §3-9-225.

Seal of board, §3-3-204.

Solicitation.

Acceptance of bribe or solicitation prohibited, §3-2-208.

Subpoenas.

Conducting or hearing appeals, §3-2-215.

Witnesses.

Conducting or hearing appeals, §3-2-215.

Bonds, surety.

Free trade among small wineries, §3-5-1608.

Local option elections.

1935 act proceedings.

Multiple violations, §3-8-314.

Multiple offenses.

Bonds for good behavior, §3-3-103.

Brandy.

Citation of act, §3-6-101.

Manufacture, §3-6-102.

Permits, §3-6-104.

Permits.

Application for permit, §3-6-104.

Residence requirements, §3-6-104.

Fee, §3-6-104.

Collection of fees and taxes, §3-6-106.

Manufacture and sale authorized, §3-6-104.

Transferability of permit, §3-6-104.

Rules and regulations, §3-6-103.

ALCOHOLIC BEVERAGES —Cont'd**Brandy —Cont'd**

Sale of brandy, §3-6-102.

Permit authorizes manufacture and sale, §3-6-104.

Tax on sales within state, §3-6-105.

Short title, §3-6-101.

Tax on sales within state, §3-6-105.

Collection of fees and taxes, §3-6-106.

Title of act, §3-6-101.

Bribery.

Board of alcoholic beverage control.

Solicitation or acceptance of bribe prohibited, §3-2-208.

Division of alcoholic beverage control.

Solicitation or acceptance of bribe prohibited, §3-2-208.

Enforcement division of alcoholic beverage control.

Solicitation or acceptance of bribe prohibited, §3-2-208.

Burden of proof.

Privilege license holders.

Violations, §3-3-218.

Registration of still or apparatus, §3-3-401.

Cabins and cottages.

Complimentary bottle of wine, §3-5-106.

Casualty.

Beer involved in fire, wreck or casualty.

Labeling of beer, §3-4-104.

Caterer's off-premise permits,

§§3-4-901 to 3-4-905.

Charitable auctions.

Wine, §§3-5-1501 to 3-5-1507.

Christmas.

Sale of intoxicating liquor on

Christmas prohibited, §3-3-211.

Churches.

Retail liquor business.

Operation of business within certain distance of church.

Prohibited, §3-4-206.

Wine.

Sacramental wine, §3-7-115.

Cider.

Sweet cider.

Exempted products, §3-1-103.

Circuit courts.

Enforcement of liquor laws.

Impeachment of circuit judge, §3-2-302.

Responsibility of circuit judge, §3-2-301.

Citation of act, §3-1-101.**ALCOHOLIC BEVERAGES —Cont'd****Closing hours.**

Retail establishments.

Violating local closing hours, §3-4-407.

Clubs.

Permits.

Suspension or refusal to renew, §3-9-210.

Private clubs, §§3-9-221 to 3-9-229.

Complimentary bottle of wine.

Cabins and cottages, §3-5-106.

Conflict of laws.

Microbrewery-restaurants.

Effect on other laws, §3-5-1203.

Conflicts of interest.

Director of department of finance and administration, §3-2-101.

Enforcement officers, §3-2-101.

Construction and interpretation.

Applicability of subchapter to future agreements.

Transferee continues under agreement, §3-5-1103.

Beer and light wines.

Wholesalers' protection from arbitrary actions of suppliers.

Legislative intent and purpose, §3-5-1101.

Cumulative nature of subchapter, §3-5-1104.

Distribution.

Inapplicability of subchapter, §3-2-411.

Purpose of subchapter, §3-2-401.

Scope of subchapter, §3-2-402.

Local option elections.

Initiated act proceedings, §§3-8-202, 3-8-203.

Microbrewery-restaurants.

Legislative findings and intent, §3-5-1201.

Wine.

Disaster relief.

Construction of act with existing laws, §3-5-804.

Contracts.

Manufacturer-seller relationships.

Prohibited acts and practices.

Exclusivity agreements, §3-3-213.

Taxation.

Payment by wholesalers and importers.

Right to contract, §3-7-306.

Wholesale dealers and distributors.

Terms and conditions binding on successor, §3-2-410.

ALCOHOLIC BEVERAGES —Cont'd**Contracts —Cont'd**

Wholesalers' protection from arbitrary actions of suppliers.

Applicability of subchapter to future agreements, §3-5-1103.

Conditions for modifications of agreements, §3-5-1111.

Corporations.**Permits.**

Proceedings on dissolution of permittee firms, §3-4-103.

Counties.

Licenses and taxes, §3-4-202.

On-premises consumption, §3-9-202.

Large attendance facility mixed drink permits, §3-9-227.

Police power of local governments.

Rules and regulations, §3-9-205.

Supplemental tax or fee levied by city, incorporated town or county, §3-9-214.

Permits.

Beer and light wine.

Required for sale, distribution, and manufacture, §3-5-211.

Retailers' permits, §3-5-212.

Police power of local governments.

On-premises consumption of alcohol.

Rules and regulations, §3-9-205.

Taxation, §3-4-202.

"Person" defined, §3-7-102.

Damages.

Wholesalers' protection from arbitrary actions of suppliers.

Civil action for violations, §3-5-1106.

Deceit.

Beer retailer licenses.

Applications, §3-5-303.

Declaratory judgments.

Wholesalers' protection from arbitrary actions of suppliers.

Civil remedy for violations, §3-5-1106.

Definitions.

Annexation of dry township into wet city or town.

Local option election, §3-8-501.

Beer, §3-5-202.

Block, §3-1-102.

Dispensary, §3-1-102.

General provisions, §3-1-102.

Illicit still, §3-3-401.

Light wine, §3-5-202.

Local option elections.

Initiated act proceedings, §3-8-201.

Malt, §3-1-102.

Manufacturer, §3-1-102.

ALCOHOLIC BEVERAGES —Cont'd**Definitions —Cont'd**

Microbrewery-restaurants, §3-5-1202.

On-premises consumption, §3-9-202.

Sunday sales, §3-9-202.

Wine, §3-9-301.

Permittee.

Responsible permittee programs, §3-4-802.

Person, §3-1-102.

Dry territories, §3-3-301.

Spirituos, §3-1-102.

Vinous, §3-1-102.

Wholesalers' protection from arbitrary actions of suppliers, §3-5-1102.

Wine.

On-premises consumption, §3-9-301.

Denatured alcohol.

Exempted products, §3-1-103.

Prohibited acts and practices, §3-3-214.

Disaster relief.

Wine, §§3-5-801 to 3-5-807.

Dispensary.

Defined, §3-1-102.

Dispensing.

Privilege of dispensing.

Fee for privilege, §3-4-604.

Distillers.

Distribution.

General provisions, §§3-2-403 to 3-2-412.

Inapplicability of subchapter, §3-2-411.

Purpose of subchapter, §3-2-401.

Scope of subchapter, §3-2-402.

Permit, §3-4-602.

Privilege of distilling.

Fee for privilege, §3-4-602.

Records of distillers of spirituous liquors.

Tax on alcoholic liquors, §3-7-113.

Distribution.

Inapplicability of subchapter, §3-2-411.

Purpose of subchapter, §3-2-401.

Scope of subchapter, §3-2-402.

Division of alcoholic beverage control.

Board of alcoholic beverage control.

Management of division by board, §3-2-201.

Bribery.

Solicitation or acceptance of bribe prohibited, §3-2-208.

Director.

Assistants.

Employment of two assistants, §3-2-202.

ALCOHOLIC BEVERAGES —Cont'd**Division of alcoholic beverage****control —Cont'd****Director —Cont'd****Beer.**

Employment of additional
administrative personnel.

Enforcement of subchapter,
§3-5-225.

Bribery.

Solicitation or acceptance of bribe
prohibited, §3-2-208.

Dry territories.

Prohibited acts and practices.

Rules and regulations, §3-3-303.

Employment of two assistants and
other personnel, §3-2-202.

Functions, §3-2-205.

Licenses.**Denial.**

Appeal or review, §§3-2-212 to
3-2-214.

Procedure, §3-2-212.

Registered mail.

Order suspending, revoking or
refusing license sent by
registered mail, §3-2-212.

Suspension or revocation of
licenses, §3-2-212.

Appeal or review, §§3-2-212 to
3-2-214.

Order suspending, revoking or
refusing license sent by
registered mail, §3-2-212.

Personnel.

Employment of two assistants and
other personnel, §3-2-202.

Powers and duties, §3-2-205.

Qualifications, §3-2-202.

Records and reports of licensees.

Authority to regulate, §3-2-211.

Removal.

Assistants and other personnel,
§3-2-202.

Rules and regulations.

Adoption and promulgation of
rules and regulations,
§3-2-206.

Dry territories.

Prohibited acts and practices,
§3-3-303.

Seal of director, §3-2-204.

Authentication of records,
§3-2-204.

Transcript fees, §3-2-217.

ALCOHOLIC BEVERAGES —Cont'd**Division of alcoholic beverage****control —Cont'd****Director —Cont'd****Wine.****Light wine.**

Employment of additional
administrative personnel,
§3-5-225.

Duties, §3-2-205.

Enforcement of liquor laws, §3-2-209.

Functions, §3-2-205.

Permit authority in absence of
election, §3-8-210.

Personnel.

Oath of personnel, §3-2-207.

Qualifications, §3-2-207.

Powers and duties, §3-2-205.

Tax collection excepted, §3-2-205.

Records.

Authentication of records, §3-2-204.

Solicitation.

Acceptance of bribe or solicitation
prohibited, §3-2-208.

Tax collection.

Exception to rights, powers,
authority and duty of division,
§3-2-205.

Wine.**Taxation.**

Enforcement of provisions,
§3-7-505.

Wine tasting offense.

Approval, §3-5-104.

Dry territories.

Annexation of dry township into wet
city or town.

Local option election, §§3-8-501,
3-8-502.

Fines.

Procuring liquor for another,
§3-3-309.

Sale, barter, loan, etc., in dry
territory, §3-8-312.

Misdemeanors.

Confiscated beverages.

Failure to surrender, §3-3-315.

Where no penalty specified,
§3-3-302.

Penalties.

Sale, barter, loan, etc., in dry
territory, §3-8-312.

Prohibited acts and practices.

Definitions.

Person, §3-3-301.

ALCOHOLIC BEVERAGES —Cont'd**Dry territories —Cont'd**

Prohibited acts and practices —Cont'd

Procuring liquor for another,
§3-3-309.

Rules and regulations.

Authority to promulgate, §3-3-303.

Seizure of beverages.

Authorized, §3-3-311.

Determination of interest in seized
beverages, §3-3-313.

Procedure, §3-3-312.

Sale of confiscated beverages,
§3-3-314.

Surrender of confiscated beverages.

Failure to surrender, §3-3-315.

Solicitation or taking orders, §3-3-310.

Violations.

Procuring liquor for another,
§3-3-309.

Wine tasting events, §3-5-104.

Duty of care.

Privilege license holders, §3-3-218.

Enforcement, §3-3-218.

Education.

Retail liquor business.

Operation of business within certain
distance of schoolhouse
prohibited, §3-4-206.

Elections.

Local option elections, §§3-8-101 to
3-8-401.

On-premises consumption.

Local option elections.

Subsequent to referendum
elections, §3-9-208.

Referendum elections.

Conduct, §3-9-206.

Effect, §3-9-207.

Subsequent local option elections.

Effect, §3-9-208.

Sunday beer and wine permits.

Hotels and restaurants, §3-9-506.

Emergencies.

Wine.

Disaster relief, §§3-5-801 to 3-5-807.

Enforcement division of alcoholic beverage control.

Bribery.

Solicitation or acceptance of bribe
prohibited, §3-2-208.

Director, §3-2-203.

Duties, §3-2-205.

Functions, §3-2-205.

Personnel.

Employment and removal,
§3-2-202.

ALCOHOLIC BEVERAGES —Cont'd**Enforcement division of alcoholic beverage control —Cont'd**

Director —Cont'd

Powers, §3-2-205.

Duties, §3-2-205.

Enforcement of liquor laws, §3-2-209.

Personnel.

Oath of personnel, §3-2-207.

Qualifications, §3-2-207.

Powers, §3-2-205.

Solicitation.

Acceptance of bribe or solicitation
prohibited, §3-2-208.

Staff, §3-2-203.

Tax collection.

Exception to rights, powers,
authority and duties of division,
§3-2-205.

Enforcement of liquor laws.

Agents.

Authority of enforcement agents,
§3-2-210.

Circuit judges.

Impeachment of circuit judge,
§3-2-302.

Responsibility of circuit judge,
§3-2-301.

Destruction of liquor.

Search warrants issued, §3-2-304.

Division of alcoholic beverage control,
§3-2-209.

Peace officers, §3-2-209.

Authority, §3-2-210.

Prosecuting attorneys.

Special prosecutor, §3-2-301.

Powers of temporary appointees,
§3-2-301.

Searches and seizures.

Authority of enforcement agents,
§3-2-210.

Search warrants.

Issuance of search warrants,
§3-2-304.

Sheriffs.

Temporary officer to act in place of
sheriff, §3-2-301.

Powers of temporary appointees,
§3-2-301.

Special prosecutor, §3-2-301.

Powers of temporary appointees,
§3-2-301.

State police.

Powers and duties, §3-2-303.

Equipment.

Illicit manufacture and equipment,
§§3-3-401 to 3-3-405.

ALCOHOLIC BEVERAGES —Cont'd**Evidence.**

- Denatured alcohol.
 - Sale for beverage purposes prohibited.
 - Prima facie evidence in sale of alcohol, §3-3-214.
- Federal license.
 - Sale of liquor or beer on federal license without state license.
 - Prima facie evidence of unlawful possession, §3-3-215.
- Illicit manufacture and equipment.
 - Burden of proof.
 - Registration of still or apparatus, §3-3-401.
 - Reputation of defendant, §3-3-405.
- Privilege license holders.
 - Burden of proof of violations, §3-3-218.

Exempted products, §3-1-103.**Fees.**

- Beer festival permits, §3-5-105.
- Brewing.
 - Privilege of brewing, §3-4-602.
- Caterer's off-premises permits, §3-4-902.
- Dispensing.
 - Privilege of dispensing, §3-4-604.
- Disposition.
 - When fees due, §3-4-501.
- Distilling.
 - Privilege of distilling, §3-4-602.
- Hotels or restaurants.
 - Permits, §3-9-212.
 - Sunday sales, §3-9-407.
- Sunday sales.
 - Permits, §3-9-407.
- Licenses, §3-4-219.
 - Microbrewery-restaurants, §3-5-1205.
- Microbrewery-restaurants.
 - License fees, §3-5-1205.
- Nonresident beer sellers' permits, §3-5-1306.
- On-premises consumption.
 - Supplemental fees.
 - Levied by political subdivisions, §3-9-214.
- Permits.
 - Applications, §3-4-208.
 - Denial of applications.
 - Refunds, §3-4-212.
- Beer.
 - Dancing privileges.
 - Inspection fee, §3-5-209.
 - Retailers' permits.
 - Counties and municipalities, §3-5-212.

ALCOHOLIC BEVERAGES —Cont'd**Fees —Cont'd**

- Permits —Cont'd
 - Beer —Cont'd
 - State permits.
 - Privilege tax, §§3-5-205, 3-5-208.
 - Transfer of permit.
 - Inspection fee, §3-5-209.
 - Copies, §3-4-220.
 - Hotels or restaurants, §3-9-212.
 - Sunday sales, §3-9-407.
 - Light wine.
 - Dancing privileges, §3-5-209.
 - Retailers' permits.
 - Counties and municipalities, §3-5-212.
 - State permits.
 - Privilege tax, §§3-5-205, 3-5-208.
 - Transfer of permit, §3-5-209.
 - Private clubs, §3-9-222.
 - Renewal fees, §3-9-223.
 - Renewal generally, §3-4-208.
 - Sunday sales, §3-9-407.
 - Suspension, cancellation or revocation, §3-9-409.
 - Appeals, §3-9-409.
- Private clubs.
 - Permits, §3-9-222.
 - Renewal fees, §3-9-223.
- Rectifying.
 - Privilege of rectifying, §3-4-603.
- Responsible permittee programs, §3-4-807.
- Sunday sales.
 - Beer and wine permit, §3-9-503.
- Board.
 - Rules and regulations.
 - Authority to adopt and enforce, §3-9-408.
- Permits, §3-9-407.
 - Suspension, cancellation or revocation, §3-9-409.
 - Appeals, §3-9-409.
- Rules and regulations.
 - Authority of board to adopt and enforce, §3-9-408.
- When fees due, §3-4-501.
 - Disposition of fees, §3-4-501.
- Wholesale support center permits, §3-5-1306.

Fiduciaries.

- Continuation of permitted business, §3-4-103.

- Sale by fiduciaries, §3-4-104.

Finance and administration department.

- Director.
 - Conflicts of interest, §3-2-101.

ALCOHOLIC BEVERAGES —Cont'd**Finance and administration****department —Cont'd****Director —Cont'd****Taxation.****Beer.**

- Employment of additional personnel to enforce subchapter, §3-5-225.
- Rules and regulations, §3-7-404.

Wine.

- Enforcement of provisions, §3-7-505.
- Rules and regulations, §3-7-501.

Wine.**Incentive grants.**

- Establishment of rules and regulations, §3-5-903.

Light wine.

- Employment of additional personnel to enforce subchapter, §3-5-225.

Taxation, §§3-7-501, 3-7-505.**Fines.****Beer.**

- Miscellaneous prohibited practices, §3-5-221.

Furnishing to minors, §3-3-201.**Local option elections.****1935 act proceedings.****Dry territories.**

- Sale, barter, loan, etc., in dry territory, §3-8-312.

Dry vote.

- Unlawful sales after, §3-8-310.

Initiated act proceedings.

- Sales, or furnishing place for sale, in dry territory, §3-8-209.

Mitigation.**Responsible permittee program.**

- Participation, §3-4-806.

Permit violations.

- Authorization to impose fines, §3-4-401.

Classes of fines, §3-4-402.**Disposition of fines, §3-4-502.****Repeat violations, §3-4-402.****Prohibited acts and practices generally, §3-3-102.****Sales to minors, §3-3-201.****Wine.****Light wine.**

- Miscellaneous prohibited practices, §3-5-221.

- Miscellaneous prohibited practices, §3-5-221.

ALCOHOLIC BEVERAGES —Cont'd**Fire prevention.**

- Beer involved in fire, wreck or casualty.

Labeling of beer, §3-4-104.**Flavoring extracts and syrups.**

- Exempted products, §3-1-103.

Fraud.**Beer.****Retailers.****Licenses.**

- Applications, §3-5-303.

Free trade among small wineries,

- §§3-5-1601 to 3-5-1609.

Fruit.**Wine.**

- Importing natural fruit and herb flavors for production of native wine, §3-5-604.

- Subject to tax, §3-5-605.

Funds.**Beer.**

- Disposition of funds, §3-5-224.

Special retail tax.

- Disposition of funds, §3-7-205.

Wine.**Incentive grants.**

- Agricultural marketing grants fund.

- Establishment and use, §3-5-908.

Light wine.

- Disposition of funds, §3-5-224.

Subsidies.

- Wine grape, berry, fruit and vegetable subsidy fund, §3-5-1007.

Gambling devices, gaming devices or slot machines kept on permitted premises, §3-9-236.**Golf tournaments.**

- Private clubs, §3-9-221.

Grand jury.**Local option elections.**

- 1935 act proceedings.

Charge to grand jury.

- Act to be given, §3-8-316.

Grants.**Wine.**

- Incentive grants, §§3-5-901 to 3-5-908.

Hearings.**Board of alcoholic beverage control.**

- Conduct of hearing on appeal before board, §3-2-215.

Permits.

- Applications, §3-4-208.

ALCOHOLIC BEVERAGES —Cont'd**Hearings —Cont'd**

- Wholesale dealers and distributors.
- Request to change wholesalers,
§§3-2-405, 3-2-406.

Home-brewed beer.

- Defined, §3-5-202.
- Exemption from privilege tax,
§3-5-205.
- Manufacture without state permit,
§3-5-210.
- Scope of state permit, §3-5-207.

**Illicit manufacture and equipment,
§3-3-402.**

- Burden of proof.
- Registration of still or apparatus,
§3-3-401.
- Definition.
- Illicit still, §3-3-401.
- Destruction of still, §3-3-404.
- Evidence.
- Burden of proof.
- Registration of still or apparatus,
§3-3-401.
- Reputation of defendant, §3-3-405.

Felonies, §3-3-402.

Generally, §3-3-402.

Illicit still.

Defined, §3-3-401.

Possession, §3-3-402.

Sale of still, §3-3-404.

Still.

Destruction, §3-3-404.

Illicit still.

Defined, §3-3-401.

Sale, §3-3-404.

Transportation, §3-3-402.

Seizure and forfeiture of vehicles,
§3-3-403.

Illicit still.

Defined, §3-3-401.

Importers.

- Distribution.
- General provisions, §§3-2-403 to
3-2-412.
- Inapplicability of subchapter,
§3-2-411.
- Purpose of subchapter, §3-2-401.
- Scope of subchapter, §3-2-402.

Indictments.

- Local option elections.
- 1935 act proceedings, §3-8-313.

Initiative and referendum.

- Sunday beer and wine permits.
- Hotels and restaurants, §3-9-506.

**ALCOHOLIC BEVERAGES —Cont'd
Injunctions.**

- Wholesalers' protection from arbitrary
actions of suppliers.
- Injunctive relief for violations,
§3-5-1106.

Inspections.

- On-premises consumption, §3-9-232.
- Records and reports of licensees,
§3-2-211.
- Sunday sales.
- Inspection of books and records.
- Consent to inspection prerequisite
to obtaining permit, §3-9-406.

Insurance.

- Sale by insurers, §3-4-104.

Interstate commerce.

- Wine.
- Bottling of local wines.
- Sizes convenient for interstate or
intrastate sale, §3-5-603.
- Regulations established by
director, §3-5-602.

Invoices.

- Failure to pay invoices.
- List of permit holders, §3-4-406.

Labels.

- Beer.
- Label submission to division,
§3-2-409.
- Sale in original, labeled containers,
§3-5-220.
- Distribution.
- Acquisition of right to sell, ship or
distribute a label, §3-2-408.
- Beer, malt products or light wine.
- Label submission requirements,
§3-2-409.
- Spirituuous and vinous beverages.
- Registration of brands and labels,
§3-2-403.

Wine.

- Light wine, §3-2-409.
- Sacramental wine, §3-7-115.

Licenses.

- Appeal and review.
- Denial, suspension or revocation,
§3-2-216.
- Board of alcoholic beverage
control.
- Review by board, §§3-2-213,
3-2-214.

Applications.

Beer.

- Retail dealers, §§3-5-302 to
3-5-306.

ALCOHOLIC BEVERAGES —Cont'd**Licenses —Cont'd****Beer.**

Federal license.

Sale of beer without state license,
§3-3-215.

Retail dealers, §§3-5-301 to 3-5-307.

City licenses, §3-4-202.

County licenses, §3-4-202.

Denial.

Appeal to board, §3-2-213.

Procedure, §3-2-212.

Review by board on own motion,
§3-2-214.

Duty of care of holders, §3-3-218.

Enforcement, §3-3-218.

Federal license.Sale of liquor or beer on federal
license without state license,
§3-3-215.Prima facie evidence of unlawful
possession, §3-3-215.

Fees, §3-4-219.

Issuance of license.

Notice requirements, §3-4-210.

Liens.

License fees, §3-4-219.

Microbrewery-restaurants.

Application, §3-5-1206.

Fees, §3-5-1205.

Form and content of application,
§3-5-1206.Operation without license
prohibited, §3-5-1207.

Restrictions, §3-5-1204.

Scope, §3-5-1204.

Municipal corporations, §3-4-202.

Prohibited acts and practices.Sale or possession without license,
§3-3-205.Records and reports of licensees,
§3-2-211.**Revocation.**

Appeal to board, §3-2-213.

Beer retailers.Misstatement or concealment of
facts in license applications,
§3-5-303.

Procedure, §3-2-212.

Review by board on own motion,
§3-2-214.**Suspension.**

Appeal to board, §3-2-213.

Procedure, §3-2-212.

Review by board on own motion,
§3-2-214.**Tax receipts.**Sale or delivery to retailer without
valid receipt, §3-3-206.**ALCOHOLIC BEVERAGES —Cont'd****Licenses —Cont'd****Wholesale dealers and distributors.**Distribution of spirituous and vinous
beverages.Designation of licensed
wholesaler, §3-2-403.Wine and beer on-premises licenses,
§§3-9-601 to 3-9-606.**Liens.**

License fees, §3-4-219.

Permit fees, §3-4-219.

Taxation.

Special retail tax.

Execution of lien, §3-7-203.

Procedure for obtaining lien,
§3-7-202.**Light wine.**General provisions, §§3-5-201 to
3-5-226.Wholesalers' protection from arbitrary
actions of suppliers, §§3-5-1101 to
3-5-1111.**Local option elections.**

Beer, §3-8-401.

Beer involved in fire, wreck or
casualty.

Labeling of beer, §3-4-104.

Control division authority to issue sale
permits, §3-8-210.**Date.**

Initiated act proceedings.

Subsequent elections, §3-8-208.

When elections held, §3-8-101.

Definitions.

Initiated act proceedings, §3-8-201.

Dry territories.

1935 act proceedings.

Dry vote.

Unlawful sales after, §3-8-310.

Sale, barter, loan, etc., in dry
territory, §3-8-312.Annexation of dry township into wet
city or town, §§3-8-501, 3-8-502.

Initiated act proceedings.

Sales, or furnishing place for sale,
in dry territory.

Prohibited, §3-8-209.

Dry vote.

Manufacturers.

Effect, §3-8-103.

1935 act proceedings.

Effect of vote against sale,
§3-8-310.

Retail dealers.

Effect, §3-8-102.

Wholesalers.

Effect, §3-8-103.

ALCOHOLIC BEVERAGES —Cont'd**Local option elections —Cont'd**

Holding of elections.

When held, §3-8-101.

Initiated act proceedings.

Appeals.

Calling of election, §3-8-205.

Applicability.

Manufacturers who sell their product exclusively to wholesalers, §3-8-203.

Ballots.

Counting and recounting, §3-8-206.

Form, §3-8-206.

Calling of election, §3-8-205.

Conduct of election, §3-8-206.

Construction and interpretation, §3-8-202.

Manufacturers who sell their product exclusively to wholesalers.

Applicability of sections, §3-8-203.

County officials.

Mandamus, §3-8-207.

Definitions, §3-8-201.

Determination of sufficiency, §3-8-205.

Dry territories.

Sales or furnishing place for sale in dry territory.

Prohibited, §3-8-209.

Felonies, §3-8-209.

Intoxicated liquor.

Defined, §3-8-201.

Mandamus.

County officials, §3-8-207.

Manufacturers who sell their product exclusively to wholesalers.

Applicability of sections, §3-8-203.

Petitions.

Misdemeanors, §3-8-204.

Procedure.

Generally, §3-8-204.

Sufficiency.

Determination, §3-8-205.

Results of election, §3-8-208.

Effects, §3-8-208.

Time for elections.

Subsequent elections, §3-8-208.

Light wine, §3-8-401.

1935 act proceedings.

Appeals.

Contests of elections, §3-8-309.

Applicability.

Election laws generally, §3-8-308.

ALCOHOLIC BEVERAGES —Cont'd**Local option elections —Cont'd**

1935 act proceedings —Cont'd

Applicability —Cont'd

Exceptions from act, §3-8-301.

Bonds, surety.

Multiple violations, §3-8-314.

Certificate of election results, §3-8-306.

Charge to grand jury.

Act to be given in, §3-8-316.

Cities.

Elections for entire city, §3-8-305.

C.O.D. shipments, §3-8-315.

Conduct of election, §3-8-304.

Contests of election, §3-8-309.

Costs of election.

Deposit, §3-8-303.

Counties.

Elections for entire county, §3-8-305.

Criminal indictment, §3-8-313.

Deposit of election costs, §3-8-303.

Districts.

Elections for entire district, §3-8-305.

Dry territories.

Sale, barter, loan, etc., in dry territory, §3-8-312.

Dry vote.

Effect of vote against sale, §3-8-310.

Effect of vote, §3-8-307.

Eligibility to vote.

Violations of persons voting who are ineligible to vote, §3-8-308.

Exceptions from act, §3-8-301.

Felonies, §3-8-312.

Grand juries.

Act to be given in charge to grand jury, §3-8-316.

Indictments, §3-8-313.

Notice of election, §3-8-304.

Order for election, §3-8-302.

Deposit of election costs prerequisite to order, §3-8-303.

Petition for election, §3-8-302.

Results of election.

Certificate, §3-8-306.

Shipments.

C.O.D. shipments, §3-8-315.

Wet vote.

Effect of vote for sale, §3-8-310.

Wholesale of intoxicating liquor in prohibited territory, §3-8-317.

ALCOHOLIC BEVERAGES —Cont'd**Local option elections —Cont'd**

On-premises consumption.

Subsequent to referendum elections,
§3-9-208.

Penalties.

Dry territories, §3-8-312.

Dry vote.

Unlawful sales after, §3-8-310.

Sales or furnishing place for sale in
dry territory, §3-8-209.

Retail dealers.

Effect of dry vote, §3-8-102.

Sale unlawful when election adverse,
§3-8-307.

Time.

Initiated act proceedings.

Subsequent elections, §3-8-208.

When elections held, §3-8-101.

Wholesale dealers and distributors.

Effect of dry vote, §3-8-103.

Mail.

Director of alcoholic beverage control
division.

Order suspending, revoking or
refusing license sent by
registered mail, §3-2-212.

Malt.

Defined, §3-1-102.

Exempted products, §3-1-103.

Malt products.

Distribution.

Label submission to division,
§3-2-409.

Native breweries, §§3-5-1401 to
3-5-1414.

Mandamus.

Local option elections.

Initiated act proceedings.

County officials, §3-8-207.

Manufacture.

Brandy, §§3-6-102, 3-6-104.

Illicit manufacture and equipment,
§§3-3-401 to 3-3-405.

Manufacturers.

Defined, §3-1-102.

Distribution.

General provisions, §§3-2-403 to
3-2-412.

Inapplicability of subchapter,
§3-2-411.

Purpose of subchapter, §3-2-401.

Scope of subchapter, §3-2-402.

Local option elections.

Effect of dry vote, §3-8-103.

ALCOHOLIC BEVERAGES —Cont'd**Manufacturers —Cont'd**

Local option elections —Cont'd

Initiated act proceedings.

Applicability of act to
manufacturers who sell their
product exclusively to
wholesalers, §3-8-203.

Permits, §3-4-602.

Manufacturer-seller relationships.

Prohibited acts and practices.

Exclusivity agreements, §3-3-213.

Generally, §3-3-212.

Medicinal preparations.

Exempted products, §3-1-103.

Microbrewery-restaurants,

§§3-5-1201 to 3-5-1208.

Conflict of laws.

Effect on other laws, §3-5-1203.

Declaration of public policy.

Legislative findings and intent,
§3-5-1201.

Definitions, §3-5-1202.

Legislative intent, §3-5-1201.

Licenses.

Application, §3-5-1206.

Fees, §3-5-1205.

Form and content of application,
§3-5-1206.

Issuance, §3-5-1204.

Operation without license
prohibited, §3-5-1207.

Restrictions, §3-5-1204.

Scope, §3-5-1204.

Misdemeanors.

Operation without license,
§3-5-1207.

Native breweries, §§3-5-1401 to
3-5-1414.

Rulemaking authority, §3-5-1208.

Taxation.

Licenses, §3-5-1205.

Military affairs.

Post-exchange package permits,
§§3-4-701 to 3-4-706.

Sales to military.

Taxation.

Payment by wholesalers and
importers.

Rules and regulations,
§3-7-307.

Minors.

Beer and light wine, §3-5-221.

Licensing of retailers, §3-5-307.

On-premises consumption, §3-9-236.

ALCOHOLIC BEVERAGES —Cont'd**Minors —Cont'd**

- Prohibited acts and practices.
 - Handling of alcoholic beverages by minors not allowed, §3-3-204.
 - Penalties for violation, §3-3-204.
- Knowingly furnishing to minor, §3-3-202.
- Posting of warning notices, §3-3-202.
- Purchase or possession by minor, §3-3-203.
- Sales, §§3-3-201, 3-3-202.
- Unknowingly furnishing to minor, §3-3-201.

Municipal corporations.**Beer.**

- Permits generally, §3-5-211.
- Retailers.
 - Permits, §3-5-212.
 - Regulation, §3-5-213.

Licenses, §3-4-202.**On-premises consumption.**

- Supplemental tax or fee levied by city, incorporated town or county, §3-9-214.

Permits.

- Beer and light wine.
 - Required for sale, distribution and manufacture, §3-5-211.
- Retailers' permits, §3-5-212.
- Police power of local governments.
 - On-premises consumption of alcohol.
 - Rules and regulations, §3-9-205.

Native brandy law.

- General provisions, §§3-6-101 to 3-6-106.

Native breweries, §§3-5-1401 to 3-5-1414.**Nonresident beer sellers, §§3-5-1301 to 3-5-1310.**

- Administrative sanctions for violations, §3-5-1310.
- Advertising, §3-5-1305.
- Application for permit, §3-5-1306.
- Authorized transactions, §3-5-1304.
- Citation of act.
 - Short title, §3-5-1301.
- Confidentiality of investigations, §3-5-1309.
- Definitions, §3-5-1302.
- Examination of permittees, §3-5-1309.
- Fees.
 - Application for permit, §3-5-1306.
 - Permits, §3-5-1306.
- First source requirement.
 - Primary American source of supply, §3-5-1308.

ALCOHOLIC BEVERAGES —Cont'd**Nonresident beer sellers —Cont'd**

- Importation by wholesaler from nonresident without permit, §3-5-1307.
- Investigation of permittees, §3-5-1309.
- Permit application, §3-5-1306.
- Permit requirement, §3-5-1303.
- Primary American source of supply.
 - General requirement, §3-5-1308.
- Prohibited actions, §3-5-1305.
- Reports.
 - Failure to file, §3-5-1305.
- Sanctions for violations, §3-5-1310.
- Shipment of beer or malt liquor into state for sale.
 - Authorized transaction, §3-5-1304.
- Short title, §3-5-1301.
- Solicitation of orders for beer or malt liquor.
 - Authorized transaction, §3-5-1304.
- Violations.
 - Sanctions, §3-5-1310.
 - Violations enumerated, §3-5-1305.
 - When permit required, §3-5-1303.
- Wholesaler importation by nonresident without permit, §3-5-1307.

Notice.**Beer.**

- Distribution areas for beer, §3-5-103.
- Retailers.
 - Licenses.
 - Applications, §3-5-304.

Local option elections.

- 1935 act proceedings, §3-8-304.

Permits.**Applications.**

- Requirements as to notice, §3-4-210.

Revocation of permit, §3-4-303.**Wholesale dealers and distributors.****Request to change wholesalers.**

- Hearing notice, §§3-2-405, 3-2-406.

Oaths.**Beer.****Permits.**

- Applicant, §3-5-214.

Board of alcoholic beverage control.

- Conducting or hearing appeals, §3-2-215.

Personnel, §3-2-207.**Division of alcoholic beverage control.**

- Personnel, §3-2-207.

Enforcement division of alcoholic beverage control.

- Personnel, §3-2-207.

ALCOHOLIC BEVERAGES —Cont'd**Oaths —Cont'd**

Wine.

Light wine.

Permits.

Applicant, §3-5-214.

Obscenity.

Beer retailers.

Nudity on premises.

Prohibited, §3-5-222.

Light wine retailers.

Nudity on premises.

Prohibited, §3-5-222.

Nudity on premises.

Penalty, §§3-5-222, 3-9-101.

Prohibited, §§3-5-222, 3-9-101.

Regulations, §§3-5-222, 3-9-101.

Off-premise caterer's permits,

§§3-4-901 to 3-4-905.

Annual fee, §3-4-902.

Collection of gross receipts tax,
§3-4-904.

Definitions, §3-4-901.

Issuance, §§3-4-902, 3-4-903.

Liability insurance, §3-4-903.

Posting requirements, §3-4-902.

Qualifications, §3-4-903.

Rulemaking authority, §3-4-905.

On-premises brewery sales, §3-5-226.**On-premises consumption.**

Bed and breakfast private clubs.

Complimentary bottle of wine,
§3-5-106.

Defined, §3-9-202.

Exemption from alcoholic beverage
law, §3-9-221.

Permit renewal fees, §3-9-223.

Procedure for obtaining permit,
§3-9-222.

Beer.

Nudity.

Penalty, §3-5-222.

Prohibited, §3-5-222.

Regulations, §3-5-222.

Sunday sales.

Permits, §3-9-411.

Brewery sales, §3-5-226.

Closing hours, §3-9-233.

Clubs.

Private clubs, §§3-9-221 to 3-9-229.

Complimentary bottle of wine,
§3-5-106.

Declaration of legislature, §3-9-201.

Definitions, §3-9-202.

Sunday sales, §3-9-202.

Disposition of fees and taxes collected,
§3-9-237.

Effect on other laws, §3-9-211.

ALCOHOLIC BEVERAGES —Cont'd**On-premises consumption —Cont'd**

Elections.

Local option elections.

Subsequent to referendum
elections, §3-9-208.

Referendum elections, §3-9-206.

Conduct, §3-9-206.

Effect, §3-9-207.

Subsequent local option elections.

Effect, §3-9-208.

Fees.

Permits.

Sunday sales.

Disposition of fees, §3-9-412.

Supplemental fees.

Levied by political subdivisions,
§3-9-214.

Hotels or restaurants.

Inspection of premises and records,
§3-9-232.Permit for hotel or restaurant,
§3-9-210.

Fees, §3-9-212.

Suspension, cancellation or
revocation.Violations of subchapter
regulating Sunday sales,
§3-9-403.

Sunday sales.

Authorization of, §3-9-215.

Wine.

Restaurant or cafe, §§3-9-301 to
3-9-307.

Hours of operation.

Closing hours, §3-9-233.

Inspections.

Sunday sales.

Books and records of permittee.

Consent to inspection
prerequisite to obtaining
permit, §3-9-406.Large attendance facility mixed drink
permits, §3-9-227.Legislative determinations and intent,
§3-9-201.

Local option elections.

Subsequent to referendum elections,
§3-9-208.

Misdemeanors, §3-9-236.

Sunday sales, §3-9-403.

Nudity.

Beer consumption, §3-5-222.

Penalty, §§3-5-222, 3-9-101.

Wine.

Light wine consumption, §3-5-222.

ALCOHOLIC BEVERAGES —Cont'd**On-premises consumption —Cont'd**

Penalties.

Revocation of permit upon failure to pay taxes.

Late payment penalty, §3-9-234.

Sunday sales, §3-9-403.

Violation of provisions, §3-9-204.

Permits.

Cancellation of permits, §3-9-235.

Sunday sales.

Violations of subchapter,
§3-9-403.

Disposition of fees and taxes collected, §3-9-237.

Effect on other laws, §3-9-211.

Hotel or restaurant permit,
§3-9-210.

Fees, §3-9-212.

Sunday sales.

Suspension, cancellation or revocation of permit for violations of subchapter,
§3-9-403.

Large attendance facility mixed drink permits, §3-9-227.

Revocation of permits, §3-9-235.

Failure to renew or pay taxes,
§3-9-234.

Late payment penalty, §3-9-234.

Sunday sales.

Violations of subchapter,
§3-9-403.

Sale of alcoholic beverages without permit, §3-9-209.

Sunday sales.

Applications, §3-9-405.

Beer, §3-9-411.

Fees, §3-9-407.

Disposition, §3-9-412.

Inspection of books and records.

Consent to inspection prerequisite to obtaining permit, §3-9-406.

Renewal after revocation for failure to remit fee, §3-9-410.

Requirements, §3-9-404.

Suspension, cancellation or revocation.

Grounds, §3-9-410.

Temporary permits, §3-9-404.

Fees, §3-9-404.

Wine, §3-9-411.

Suspension of permits, §3-9-235.

Sunday sales.

Violations of subchapter,
§3-9-403.

ALCOHOLIC BEVERAGES —Cont'd**On-premises consumption —Cont'd**

Police power of state and local governments.

Rules and regulations, §3-9-205.

Policy of state, §3-9-201.

Private clubs.

General provisions, §§3-9-221 to
3-9-229.

Purpose of chapter, §3-9-201.

Restaurants.

Wine.

Restaurant or cafe, §§3-9-301 to
3-9-307.

Rules and regulations.

Adoption and enforcement, §3-9-205.

Scope of provisions of act, §3-9-203.

Sunday sales.

Authorization of Sunday sales,
§3-9-215.

Beer, §3-9-411.

Board.

Defined, §3-9-402.

Definitions, §3-9-402.

Director.

Defined, §3-9-402.

Excursion boat.

Defined, §3-9-402.

Fees.

Disposition of fees, §3-9-412.

Hotels or restaurants.

Authorization of Sunday sales,
§3-9-215.

Exemptions, §3-9-413.

Hotel defined, §3-9-402.

Inspection of books and records.

Consent to inspection prerequisite to obtaining permit, §3-9-406.

Large attendance facilities, §3-9-216.

Legislative declaration.

Purpose of subchapter, §3-9-401.

Misdemeanors, §3-9-403.

On-premises consumption.

Defined, §3-9-402.

Permits.

Applications, §3-9-405.

Beer, §3-9-411.

Fees, §3-9-407.

Disposition, §3-9-412.

Inspection of books and records.

Consent to inspection prerequisite to obtaining permit, §3-9-406.

Renewal after revocation for failure to remit fee, §3-9-410.

Requirements, §3-9-404.

Suspension, cancellation or revocation.

Grounds, §3-9-410.

ALCOHOLIC BEVERAGES —Cont'd**On-premises consumption —Cont'd**

Sunday sales —Cont'd

Permits —Cont'd

Suspension, cancellation or
revocation —Cont'dSunday sales without valid
permit, §3-9-403.

Temporary permits, §3-9-404.

Wine, §3-9-411.

Private clubs.

Defined, §3-9-402.

Purpose of subchapter, §3-9-401.

Restaurant.

Defined, §3-9-402.

Exemptions, §3-9-413.

Subchapter not intended to impose
additional requirement on clubs
to obtain permit, §3-9-404.

Wine, §3-9-411.

Wine.

Light wine.

Nudity.

Penalty, §3-5-222.

Prohibited, §3-5-222.

Regulations, §3-5-222.

Restaurant or cafe, §§3-9-301 to
3-9-307.

Sunday sales.

Permits, §3-9-411.

Ordinances.

Retail establishments.

Local closing hours, §3-4-407.

Pari-mutuel wagering.

Mixed drink permit, §3-9-238.

Partnerships.

Permits.

Proceedings on dissolution of
permittee firms, §3-4-103.**Peace officers.**

Enforcement of liquor laws, §3-2-209.

Authority, §3-2-210.

Penalties.

Beer, §3-5-203.

Miscellaneous prohibited practices,
§3-5-221.

Retailers.

Nudity on premises, §3-5-222.

Sale or manufacture without state
permit, §3-5-210.

Transportation.

Duplicate bills of lading.

Noncompliance with
requirements, §3-5-218.

Exempted products.

Sale for intoxicating beverage
purposes, §3-1-103.**ALCOHOLIC BEVERAGES —Cont'd****Penalties —Cont'd**

Local option elections.

1935 act proceedings.

Violations of act pertaining to dry
territories, §§3-8-310 to
3-8-312.

Initiated act proceedings.

Sales, or furnishing place for sale,
in dry territory, §3-8-209.Manufacture, sale or transportation of
alcoholic liquors.

Tax on alcoholic liquors.

Violations of provisions, §3-7-103.

Mitigation.

Responsible permittee program
participation, §3-4-806.Nudity on premises, §§3-5-222,
3-9-101.

On-premises consumption.

Revocation of permit upon failure to
renew or pay taxes.

Late payment penalty, §3-9-234.

Sunday sales, §3-9-403.

Violations of provisions, §3-9-204.

Price regulations.

Violations of provisions, §3-7-111.

Retailer's permits.

Issuance of permit last thirty days
of even-numbered years
forbidden, §3-4-204.

Taxation.

Beer taxes.

Noncompliance with subchapter,
§3-7-403.Payment of taxes by wholesalers
and importers.Delinquent tax penalties,
§3-7-304.Failure to produce records on
demand, §3-7-303.Possession or sale of untaxed liquor,
§3-3-216.

Wine taxes.

Noncompliance with subchapter,
§3-7-504.

Wine.

Cafe or restaurant licensed to sell
wines.

Violations of provisions, §3-9-302.

Light wine, §3-5-203.

Miscellaneous prohibited
practices, §3-5-221.

Retailers.

Nudity on premises, §3-5-222.

Sale or manufacture without state
permit, §3-5-210.

ALCOHOLIC BEVERAGES —Cont'd**Penalties —Cont'd**

Wine —Cont'd

Light wine —Cont'd

Transportation.

Noncompliance with
requirements respecting
duplicate bills of lading,
§3-5-218.

Retailers.

Nudity on premises, §3-5-222.

Permits.

Appeals, §3-4-213.

Applications.

Appeals, §3-4-213.

Contents, §3-4-209.

Denial, §3-4-212.

Fees, §3-4-208.

Denial of applications.

Refunds, §3-4-212.

Hearings, §3-4-208.

Notice requirements, §3-4-210.

Procedure for acceptance and
determination, §3-4-208.

Protests, §3-4-211.

Reapplication, §3-4-222.

Retail dealers, §§3-4-205, 3-4-604.

Time, §3-4-219.

Assignment, §3-4-217.

Beer.

Dancing privileges.

Inspection fee, §3-5-209.

Duration of state permits, §3-5-208.

Fees.

Dancing privileges.

Inspection fee, §3-5-209.

Retailers' permits.

Counties and municipalities,
§3-5-212.

State permits.

Privilege tax, §§3-5-205, 3-5-208.

Transfer of permit inspection fee,
§3-5-209.

Issuance of state permit, §3-5-206.

Local permits.

Required, §3-5-211.

Retailers' permits, §3-5-212.

Misdemeanors.

Sell or manufacture without state
permit, §3-5-210.

Oath by applicant, §3-5-214.

Retailers.

Local permits, §3-5-212.

Qualifications, §3-5-215.

Scope of state permit, §3-5-207.

Transfer of permit, §3-5-209.

Beer festival permits, §3-5-105.

ALCOHOLIC BEVERAGES —Cont'd**Permits —Cont'd**

Class A permit violations.

Enumeration, §3-4-403.

Fines, §3-4-402.

Class B permit violations.

Enumeration, §3-4-404.

Fines, §3-4-402.

Class C permit violations.

Enumeration, §3-4-405.

Fines, §3-4-402.

Contents, §3-4-214.

Control division authority in absence
of election, §3-8-210.

Copies, §3-4-220.

Criminal background check.

Applicants for permits, §3-2-103.

Display, §3-4-102.

Dissolution of permittee firms.

Proceedings on dissolution, §3-4-103.

Distiller's permit, §3-4-602.

Diversity of ownership and financial
interest in geographic area.

Lack of considered when issuing
permit, §3-4-223.

Duplicates, §3-4-220.

Duration, §3-4-219.

Entitled to permits.

Who not entitled, §3-4-207.

Exhibition, §3-4-102.

Fees.

Applications, §3-4-208.

Denial of applications.

Refunds, §3-4-212.

Beer.

Dancing privileges.

Inspection fee, §3-5-209.

Retailers' permits.

Counties and municipalities,
§3-5-212.

State permits.

Privilege tax, §§3-5-205, 3-5-208.

Transfer of permit.

Inspection fee, §3-5-209.

Copies, §3-4-220.

Light wine.

Dancing privileges, §3-5-209.

Retailers' permits.

Counties and municipalities,
§3-5-212.

State permits.

Privilege tax, §§3-5-205, 3-5-208.

Transfer of permit, §3-5-209.

Private clubs, §3-9-222.

Renewal fees, §3-9-223.

Renewal generally, §3-4-208.

Fiduciaries.

Continuation of permitted business,
§3-4-103.

ALCOHOLIC BEVERAGES —Cont'd**Permits —Cont'd**

Fines.

Violations.

Authorization to impose fines,
§3-4-401.

Classes of fines, §3-4-402.

Disposition of fines, §3-4-502.

Repeat violations, §3-4-402.

Fingerprints.

Applicants to supply, §3-2-103.

Hearings.

Applications, §3-4-208.

Home-brewed beer.

Scope of state permit, §3-5-207.

Hotels or restaurants, §3-9-210.

Fees, §3-9-212.

Inspection of premises and records,
§3-9-232.

Inactive status, §3-4-201.

Information supplied by person
applying for, §3-2-103.

Invoices.

Failure to pay invoices, §3-4-406.

List of permit holders, §3-4-406.

Kinds generally, §3-4-601.

Lack of diversity of ownership and
financial interest in geographic
area.

Considered when issuing permit,
§3-4-223.

Large attendance facility mixed drink
permit, §3-9-227.

Liens.

Permit fees, §3-4-219.

Manufacturer's permit, §3-4-602.

Military service club mixed drink
permit, §3-4-706.

Nonresident beer sellers, §§3-5-1301 to
3-5-1310.

Notice.

Applications.

Requirements as to notice,
§3-4-210.

Revocation of permit, §3-4-303.

Number.

Restricted, §3-4-201.

Off-premise caterer's permits,
§§3-4-901 to 3-4-905.

Pari-mutuel mixed drink permit,
§3-9-238.

Post-exchange package permits.

Authorized purchasers, §3-4-703.

Creation, §3-4-701.

Expiration, §3-4-701.

Fees, §3-4-701.

Hours of lawful sales, §3-4-702.

Issuance, §3-4-701.

ALCOHOLIC BEVERAGES —Cont'd**Permits —Cont'd**

Post-exchange package permits
—Cont'd

Military service club mixed drink
permit, §3-4-706.

Rules and regulations.

Adoption, §3-4-704.

Sales.

Authorized purchasers, §3-4-703.

Hours of lawful sales, §3-4-702.

Unauthorized sales, §3-4-705.

Unauthorized sales, §3-4-705.

Wholesale distributors.

Purchases from, §3-4-702.

Private clubs.

Fees, §3-9-222.

Renewal fees, §3-9-223.

Large attendance facility mixed
drink permit, §3-9-227.

Procedure for obtaining permit.
Generally, §3-9-222.

Reapplication for permit upon
denial, §3-9-228.

Renewal fees, §3-9-223.

Suspension or refusal to renew,
§3-9-210.

Taxes, §3-9-223.

Protests.

Applications, §3-4-211.

Rectifier's permit, §3-4-603.

Application, §3-4-603.

Generally, §3-4-603.

Renewal, §3-4-216.

Fees, §3-4-208.

Penalty for late renewal, §3-4-216.

Required, §3-4-101.

Responsible permittee programs,
§§3-4-801 to 3-4-807.

Certification, §3-4-805.

Compliance.

Effect, §3-4-804.

Definitions, §3-4-802.

Establishment, §3-4-803.

Fees, §3-4-807.

Fines.

Mitigation, §3-4-806.

Legislative intent, §3-4-801.

Penalties.

Mitigation, §3-4-806.

Restriction as to number, §3-4-201.

Retail dealers, §3-4-604.

Application, §3-4-604.

Prohibition on issuance of permit
when applicant interested in
another permit, §3-4-205.

Generally, §3-4-604.

ALCOHOLIC BEVERAGES —Cont'd**Permits —Cont'd**

Retail dealers —Cont'd

Issuance of permit last thirty days
of even-numbered years
forbidden, §3-4-204.

Permitted premises.

Restricted to permitted premises,
§3-4-218.

Restricted to permitted premises,
§3-4-218.

When applicant interested in
another permit.

Prohibition on issuance of permit,
§3-4-205.

Revocation of permit.

Causes for revocation, §3-4-301.

Statement of causes, §3-4-302.

Failure to pay taxes, §3-4-301.

Notice of revocation, §3-4-303.

Statement of causes of revocation,
§3-4-302.

Shipment of alcoholic liquors.

Transport permit must accompany
shipment, §3-7-106.

Sunday beer and wine permits,
§§3-9-501 to 3-9-507.

Time.

Issuance, §3-4-208.

Transfer, §3-4-217.

Transfer of permit from location to
location, §3-4-221.

Types generally, §3-4-601.

Violations.

Classes of violations.

Class A violations.

Enumeration, §3-4-403.

Fines, §3-4-402.

Class B violations.

Enumeration, §3-4-404.

Fines, §3-4-402.

Class C violations.

Enumeration, §3-4-405.

Fines, §3-4-402.

Generally, §3-4-402.

Fines.

Authorization to impose fines,
§3-4-401.

Classes of fines, §3-4-402.

Disposition, §3-4-502.

Invoices.

Failure to pay, §3-4-406.

Repeat violations, §3-4-402.

Wholesaler's permit, §3-4-605.

Act cumulative, §3-4-606.

Application, §3-4-605.

Cancellation or revocation of
permits, §3-4-606.

ALCOHOLIC BEVERAGES —Cont'd**Permits —Cont'd**

Wholesaler's permit —Cont'd

Cumulative nature of act, §3-4-606.

Eligibility for permits, §3-4-606.

Existing holders.

Application to existing holders,
§3-4-606.

Generally, §3-4-605.

Revocation of permits, §3-4-606.

Who not eligible for permits,
§§3-4-207, 3-4-606.

Wine.

Charitable auction permit.

Temporary permit, §§3-5-1501,
3-5-1506.

Exemption from provisions of act,
§3-4-101.

Light wine.

Dancing privileges.

Inspection fee, §3-5-209.

Duration of state permits,
§3-5-208.

Fees.

Dancing privileges, §3-5-209.

Retailers' permits, §3-5-212.

State permits, §§3-5-205,
3-5-208.

Transfer of permit, §3-5-209.

Issuance of state permit, §3-5-206.

Local permits.

Required, §3-5-211.

Retailers' permits, §3-5-212.

Misdemeanors.

Sale or manufacture without
state permit, §3-5-210.

Oath by applicant, §3-5-214.

Retailers.

Local permits, §3-5-212.

Qualifications, §3-5-215.

Scope of state permit, §3-5-207.

Transfer of permits, §3-5-209.

Sampling permit, §3-5-104.

Post-exchange package permits,
§§3-4-701 to 3-4-706.

Price regulations.

Additional tax.

Levy of additional tax, §3-7-111.

Disposition of proceeds, §3-7-111.

Levy of additional tax, §3-7-111.

Penalty for violation of provisions,
§3-7-111.

Private clubs.

Advertising, §3-9-226.

Applicability of alcoholic beverage
laws.

Exception from laws, §3-9-221.

ALCOHOLIC BEVERAGES —Cont'd**Private clubs —Cont'd**

Exception from alcoholic beverage laws, §3-9-221.

Fees.

Large attendance facility mixed drink permit, §3-9-227.

Permits, §3-9-222.

Renewal fees, §3-9-223.

Golf tournaments, §3-9-221.

On-premises consumption.

Sunday sales.

Subchapter not intended to impose additional requirement on clubs to obtain permit, §3-9-404.

Permits.

Fees, §3-9-222.

Large attendance facility mixed drink permit, §3-9-227.

Renewal fees, §3-9-223.

Procedure for obtaining permit.

Generally, §3-9-222.

Reapplication for permit upon denial, §3-9-228.

Renewal fees, §3-9-223.

Taxes, §3-9-223.

Reapplication for permit upon denial, §3-9-228.

Rules and regulations, §3-9-225.

Sales.

Prohibitions, §3-9-224.

Sunday sales.

Subchapter not intended to impose additional requirement on clubs to obtain permit for, §3-9-404.

Taxation.

Gross proceeds or gross receipts tax, §3-9-223.

Taxes.

Collection of delinquent state and local taxes, §3-9-229.

Prohibited acts and practices.

Accessories guilty as principals, §3-3-101.

Alcoholics or intoxicated persons.

Furnishing to, §3-3-209.

Beer.

Enumeration of miscellaneous prohibited practices, §3-5-221.

Christmas.

Sale of intoxicating liquor on Christmas prohibited, §3-3-211.

Denatured alcohol.

Sale for beverage purposes prohibited, §3-3-214.

Prima facie evidence in sale, §3-3-214.

ALCOHOLIC BEVERAGES —Cont'd**Prohibited acts and practices****—Cont'd****Equipment.**

Illicit manufacture and equipment generally, §§3-3-401 to 3-3-405.

Licenses.

Sale or possession without license, §3-3-205.

Tax receipts.

Sale or delivery to retailer without valid receipt, §3-3-206.

Manufacture.

Illicit manufacture and equipment, §§3-3-401 to 3-3-405.

Manufacturer-seller relationships.

Exclusivity agreements, §3-3-213.

Generally, §3-3-212.

Minors.

Handling of alcoholic beverages by minor, §3-3-204.

Knowingly furnishing to minor, §3-3-202.

Posting of warning notices, §3-3-202.

Purchase or possession by minor, §3-3-203.

Unknowingly furnishing to minor, §3-3-201.

Multiple offenses, §3-3-103.

Bonds for good behavior, §3-3-103.

Possession without license, §3-3-205.

Sales.

Alcoholics or intoxicated persons, §3-3-209.

License tax receipts.

Sale or delivery to retailer without valid receipt, §3-3-206.

Manufacturer-seller relationships.

Exclusivity agreements, §3-3-213.

Generally, §3-3-212.

Possession or procuring orders unlawfully, §3-3-208.

Sale without license, §3-3-205.

Sunday sales, §3-3-210.

Sentences, §3-3-102.

Solicitation or taking orders, §3-3-310.

Taxation.

Possession or sale of untaxed liquor unlawful, §3-3-216.

Wine.**Disaster relief.**

Expanding operations during period of program, §3-5-806.

Light wines.

Enumeration of miscellaneous prohibited practices, §3-5-221.

ALCOHOLIC BEVERAGES —Cont'd**Prosecuting attorneys.**

Enforcement of liquor laws.

Special prosecutor, §3-2-301.

Records.

Beer, §3-5-219.

Distillers and wholesalers of spirituous liquors.

Tax on alcoholic liquors, §3-7-113.

Division of alcoholic beverage control.

Authentication of records, §3-2-204.

Licensees' records, §3-2-211.

Inspection, §3-2-211.

On-premises consumption.

Inspection of premises and records, §3-9-232.

Taxation, §§3-7-113, 3-7-303.

Wine.

Incentive grants, §3-5-906.

Light wine, §3-5-219.

Subsidies, §3-5-1006.

Rectifiers, §3-4-603.**Refunds.**

Wrongful collections of tax, §3-4-503.

Religion.

Retail liquor business.

Operation of business within certain distance of church, §3-4-206.

Reports.

Beer, §3-5-219.

Licensees' reports, §3-2-211.

Inspection, §3-2-211.

Taxation, §3-7-105.

Additional permit fees and taxes, §3-7-111.

Beer taxes, §3-7-401.

Penalty for failure to file timely report, §3-7-403.

Rules and regulations, §3-7-404.

Payment by wholesalers and importers.

Monthly report, §3-7-302.

Wine taxes, §3-7-502.

Native wines, §3-7-506.

Penalty for failure to file timely report, §3-7-504.

Wine.

Light wine, §3-5-219.

Residence.

Brandy.

Application for permit, §3-6-104.

Responsible permittee programs,

§§3-4-801 to 3-4-807.

Certification, §3-4-805.

Compliance.

Effect, §3-4-804.

Definitions, §3-4-802.

Establishment, §3-4-803.

ALCOHOLIC BEVERAGES —Cont'd**Responsible permittee programs**

—Cont'd

Fees, §3-4-807.

Fines.

Mitigation, §3-4-806.

Penalties.

Mitigation, §3-4-806.

Purpose, §3-4-801.

Retail dealers.

Church.

Operation of business within certain distance of church prohibited, §3-4-206.

Failure to obtain spirituous liquors from approved sources.

Tax on alcoholic liquors, §3-7-114.

Local option elections.

Effect of dry vote, §3-8-102.

On-premises consumption generally, §§3-9-101 to 3-9-307.

Schoolhouse.

Operation of business within certain distance of schoolhouse prohibited, §3-4-206.

Special retail tax.

Duties, §3-7-201.

Retail establishments.

Local closing hours, §3-4-407.

Violating local closing hours, §3-4-407.

Rules and regulations.

Beer.

Definitions, §3-5-202.

Excise tax on beer, §3-7-404.

Retailers.

Nudity on premises, §3-5-222.

Regulation by municipal corporations, §3-5-213.

Brandy law, §3-6-103.

Director of alcoholic beverage control division.

Adoption and promulgation of rules and regulations, §3-2-206.

Supervision and control of nonresident beer sellers' permits, §3-2-205.

Dry territories.

Prohibited acts and practices.

Authority to promulgate, §3-3-303.

Fees.

Sunday sales.

Adoption and enforcement, §3-9-408.

Manufacture, sale or transportation of alcoholic liquors.

Tax on alcoholic liquors, §3-7-107.

Microbrewery-restaurants.

Rulemaking authority, §3-5-1208.

ALCOHOLIC BEVERAGES —Cont'd**Rules and regulations —Cont'd**

Nudity on premises, §§3-5-222, 3-9-101.

On-premises consumption.

Adoption and enforcement, §3-9-205.

Private clubs, §3-9-225.

Wine.

Bottling of local wines in sizes convenient for interstate or intrastate sale.

Director to establish regulations, §3-5-602.

Incentive grants.

Authority to establish rules and regulations, §3-5-903.

Retailers.

Nudity on premises, §3-5-222.

Regulation by municipal corporations, §3-5-213.

Sales.

Illicit stills, §3-3-404.

Manufacturer-seller relationships.

Prohibited acts and practices, §§3-3-212, 3-3-213.

Exclusivity agreements, §3-3-213.

Generally, §3-3-212.

Nonresident beer sellers, §§3-5-1301 to 3-5-1310.

On-premises consumption.

Sunday sales.

Authorization of, §3-9-215.

Large attendance facilities, §3-9-216.

Private clubs.

Prohibitions, §3-9-224.

Prohibited acts and practices.

Furnishing to alcoholics or intoxicated persons, §3-3-209.

Manufacturer-seller relationships.

Exclusivity agreements, §3-3-213.

Generally, §3-3-212.

Possession or procuring orders unlawfully, §3-3-208.

Sale or delivery to retailer without valid license tax receipt, §3-3-206.

Sale without license, §3-3-205.

Sunday sales, §3-3-210.

Sunday sales.

Prohibited acts and practices, §3-3-210.

Generally, §3-3-210.

Wine.

Bottling of local wine in size convenient for sale, §§3-5-602, 3-5-603.

ALCOHOLIC BEVERAGES —Cont'd**Sales —Cont'd**

Wine —Cont'd

Legislative determinations and intent, §3-5-601.

Schoolhouses.

Retail liquor business.

Operation of business within certain distance of schoolhouse prohibited, §3-4-206.

Seals and sealed instruments.

Board of alcoholic beverage control, §3-2-204.

Searches and seizures.

Authority of enforcement agents, §3-2-210.

Dry territories.

Prohibited acts and practices.

Authority to seize beverages, §3-3-311.

Determination of interest in seized beverages, §3-3-313.

Procedure upon seizure of beverages, §3-3-312.

Sale of confiscated beverages, §3-3-314.

Surrender of confiscated beverages.

Failure to surrender, §3-3-315.

Enforcement of liquor laws.

Destruction of liquor.

Issuance of search warrants, §3-2-304.

Illicit manufacture and equipment.

Seizure and forfeiture of vehicles, §3-3-403.

Sentencing.

Prohibited acts and practices, §3-3-102.

Sheriffs.

Enforcement of liquor laws.

Temporary officer to act in place of sheriff, §3-2-301.

Ships and shipping.

Methods of identifying liquors shipped into state, §3-7-112.

Permits.

Transport permit must accompany permit, §3-7-106.

Short title, §3-1-101.**Solicitation.**

Board of alcoholic beverage control.

Acceptance of bribe or solicitation prohibited, §3-2-208.

Division of alcoholic beverage control.

Acceptance of bribe or solicitation prohibited, §3-2-208.

ALCOHOLIC BEVERAGES —Cont'd**Solicitation —Cont'd**

Dry territories.

Prohibited acts and practices,
§3-3-310.

Enforcement division of alcoholic
beverage control.

Acceptance of bribe or solicitation
prohibited, §3-2-208.

Special retail tax.

General provisions, §§3-7-201 to
3-7-307.

Spirituous beverages.

Defined, §3-1-102.

Distribution.

Registration of brands and labels,
§3-2-403.

State of Arkansas.

Police power of state.

On-premises consumption.

Rules and regulations, §3-9-205.

State police.

Enforcement of liquor laws.

Powers and duties of state police,
§3-2-303.

States.

Wine.

Disaster relief.

Acquisition of ingredients from
outside state, §3-5-803.

Storage.

Beer, §3-5-216.

Wine.

Light wine, §3-5-216.

Subpoenas.

Board of alcoholic beverage control.

Conducting or hearing appeals,
§3-2-215.

Subsidies.

Wine, §§3-5-1001 to 3-5-1007.

Sunday beer and wine permits.

Applicability of other provisions,
§3-9-502.

Application for permit, §3-9-504.

Contents of application, §3-9-504.

Definitions, §3-9-501.

Duration of permit, §3-9-504.

Elections.

Referendum authorizing permit in
hotels and restaurants,
§3-9-506.

Fees.

Permit fee, §3-9-503.

Schedule of fees for different
permits, §3-9-505.

Hours of operation, §3-9-507.

Permit requirements, §3-9-503.

ALCOHOLIC BEVERAGES —Cont'd**Sunday beer and wine permits**

—Cont'd

Referendum authorizing permit in
hotels and restaurants, §3-9-506.

Renewal fee, §3-9-505.

Requirements for permit, §3-9-503.

Scope of provisions.

Applicability of other provisions,
§3-9-502.

Sunday sales.

Prohibited acts and practices,
§3-3-210.

Sunday beer and wine permits,
§§3-9-501 to 3-9-507.

Suppliers of beer and light wine.

Wholesalers' protection from arbitrary
actions of suppliers, §§3-5-1101 to
3-5-1111.

Syrups.

Exempted products, §3-1-103.

Taxation.

Additional permit fees and taxes,
§3-7-111.

Beer.

Actions to recover taxes, §3-5-223.

Payment of tax, §§3-7-105, 3-7-401.

Penalty for failure to timely pay,
§3-7-403.

Rules and regulations, §3-7-404.

Penalties for noncompliance,
§3-7-403.

Privilege tax, §3-5-205.

Time for payment, §3-5-208.

Rebate for qualified manufacturers,
§3-7-116.

Reports, §§3-7-105, 3-7-401.

Penalty for failure to file timely
report, §3-7-403.

Rules and regulations, §3-7-404.

Rules and regulations, §3-7-404.

Stamp no longer required, §3-7-105.

Brandy.

Collection of fees and taxes,
§3-6-106.

Sales within state, §3-6-105.

Collection of fees and taxes,
§3-6-106.

City taxes, §3-4-202.

Collection of tax.

Refunds of wrongful collections,
§3-4-503.

Suits to restrain collection
prohibited, §3-4-503.

Contracts.

Payment of taxes by wholesalers
and importers.

Right to contract, §3-7-306.

ALCOHOLIC BEVERAGES —Cont'd**Taxation —Cont'd**

County taxes, §3-4-202.

“Person” defined, §3-7-102.

Date.

Payment of taxes by wholesalers and importers.

Due date, §3-7-301.

Monthly report and payment, §3-7-302.

Definitions.

Person, §3-7-102.

Delinquent taxes.

Manufacture, sale or transportation of alcoholic liquors.

Collection of delinquent taxes, §3-7-109.

Division of alcoholic beverage control.

Rights, powers, authority and duties of department.

Tax collection excepted, §3-2-205.

Enforcement division of alcoholic beverage control.

Rights, powers, authority and duties of division.

Tax collection excepted, §3-2-205.

Failure to obtain spirituous liquors from approved sources, §3-7-114.

Gross receipts tax.

On-premises consumption, §3-9-213.

Identifying liquors shipped into state.

Methods of identifying liquors, §3-7-112.

Liens.

Special retail tax.

Execution of lien, §3-7-203.

Procedure for obtaining lien, §3-7-202.

Manufacture of alcoholic liquors.

Collection of delinquent taxes.

Penalty, §3-7-109.

Disposition of funds, §3-7-108.

No duplicate tax intended, §3-7-101.

Penalty for violations, §3-7-103.

Rate of tax, §3-7-104.

Recovery of tax wrongfully collected, §3-7-110.

Rules and regulations, §3-7-107.

Microbrewery-restaurants.

State excise tax payment by licensees, §3-5-1205.

Military sales.

Payment of taxes by wholesalers and importers.

Rules and regulations, §3-7-307.

ALCOHOLIC BEVERAGES —Cont'd**Taxation —Cont'd**

Misdemeanors.

Payment of taxes by wholesalers and importers.

Failure to produce records on demand, §3-7-303.

Possession or sale of untaxed liquor, §3-3-216.

Municipal corporations, §3-4-202.

On-premises consumption.

Disposition of fees and taxes collected, §3-9-237.

Gross receipts tax, §3-9-213.

Revocation of permit upon failure to renew or pay taxes, §3-9-234.

Supplemental taxes, §3-9-213.

Levied by political subdivisions, §3-9-214.

Payment of tax, §3-7-105.

Beer taxes, §3-7-401.

Penalty for failure to timely pay, §3-7-403.

Rules and regulations, §3-7-404.

Contracts.

Right to contract.

Wholesalers and importers, §3-7-306.

Date.

Due date.

Payment by wholesalers and importers, §3-7-301.

Monthly report and payment.

Wholesalers and importers, §3-7-302.

Delinquent tax penalties.

Wholesalers and importers, §3-7-304.

Importers generally, §§3-7-301 to 3-7-307.

Military sales.

Rules and regulations.

Payment of taxes by wholesalers and importers, §3-7-307.

Nonpayments, §3-7-304.

Penalties.

Payment of taxes by wholesalers and importers.

Failure to produce records on demand, §3-7-303.

Wholesalers and importers, §3-7-303.

Delinquent tax penalties, §3-7-304.

Records.

Payment of taxes by wholesalers and importers, §3-7-303.

ALCOHOLIC BEVERAGES —Cont'd**Taxation —Cont'd**

Payment of tax —Cont'd

Reports.

Monthly report.

Payment of taxes by wholesalers and importers, §3-7-302.

Right to contract, §3-7-306.

Rules and regulations.

Military sales.

Payment of taxes by wholesalers and importers, §3-7-307.

Time.

Due date.

Payment by wholesalers and importers, §3-7-301.

Monthly report and payment.

Wholesalers and importers, §3-7-302.

Wholesalers generally, §§3-7-301 to 3-7-307.

Wine taxes, §3-7-502.

Penalty for failure to timely pay, §3-7-504.

Penalties.

Beer taxes.

Noncompliance with subchapter, §3-7-403.

Payment of taxes by wholesalers and importers.

Delinquent tax penalties, §3-7-304.

Failure to produce records on demand, §3-7-303.

Possession or sale of untaxed liquor, §3-3-216.

Wine taxes.

Noncompliance with subchapter, §3-7-504.

Permits.

Additional permit fees and taxes, §3-7-111.

Manufacture, sale or transportation of alcoholic liquors.

Revocation of permit, §3-7-103.

Revocation of permit upon failure to pay taxes, §3-4-301.

Transport permit must accompany shipment, §3-7-106.

Person.

Defined, §3-7-102.

Possession or sale of untaxed liquor unlawful, §3-3-216.

Price regulation.

Disposition of proceeds, §3-7-111.

Levy of additional tax, §3-7-111.

Violations of provisions, §3-7-111.

ALCOHOLIC BEVERAGES —Cont'd**Taxation —Cont'd**

Private clubs.

Collection of delinquent state and local taxes, §3-9-229.

Gross proceeds or gross receipts tax, §3-9-223.

Rate of tax, §3-7-104.

Rebate for qualified manufacturers, §3-7-116.

Records.

Distillers of spirituous liquors, §3-7-113.

Payment of taxes by wholesalers and importers, §3-7-303.

Wholesalers of spirituous liquors, §3-7-113.

Refunds.

Wrongful collections, §3-4-503.

Reporting of tax, §3-7-105.

Additional taxes, §3-7-111.

Beer taxes, §3-7-401.

Penalty for failure to file timely report, §3-7-403.

Rules and regulations, §3-7-404.

Payment of taxes by wholesalers and importers.

Monthly report, §3-7-302.

Wine taxes, §3-7-502.

Native wines, §3-7-506.

Penalty for failure to file timely report, §3-7-504.

Restraining collection of tax.

Suits to restrain collection prohibited, §3-4-503.

Retailers of spirituous liquors.

Failure to obtain liquors from approved sources, §3-7-114.

Rules and regulations.

Beer taxes, §3-7-404.

Manufacture, sale or transportation of alcoholic liquors, §3-7-107.

Military sales, §3-7-307.

Payment of taxes by wholesalers and importers.

Sales to military, §3-7-307.

Wine taxes.

Generally, §3-7-501.

Sale of alcoholic beverages.

Collection of delinquent taxes, §3-7-109.

Disposition of funds, §3-7-108.

No duplicate tax intended, §3-7-101.

Penalty for violations, §3-7-103.

Rate of tax, §3-7-104.

Recovery of tax wrongfully collected, §3-7-110.

Rules and regulations, §3-7-107.

ALCOHOLIC BEVERAGES —Cont'd**Taxation —Cont'd**

Sale of alcoholic beverages —Cont'd
 Untaxed liquor sales unlawful,
 §3-3-216.

Shipment of alcoholic liquors.

Methods of identifying liquors
 shipped into state, §3-7-112.

Permit to transport must accompany
 shipment, §3-7-106.

Special retail tax.

Alternative remedies, §3-7-204.

Collection, §3-7-201.

Alternative remedies, §3-7-204.

Generally, §3-7-201.

Liens.

Execution, §3-7-203.

Funds.

Disposition, §3-7-205.

Imposition of tax, §3-7-201.

Liens.

Execution, §3-7-203.

Procedure for obtaining, §3-7-202.

Suits to restrain collection of tax
 prohibited, §3-4-503.

Supplemental taxes.

On-premises consumption, §3-9-213.

Levied by political subdivisions,
 §3-9-214.

Time.

Payment of taxes by wholesalers
 and importers.

Due date, §3-7-301.

Monthly report and payment,
 §3-7-302.

Transportation.

Delinquent taxes collected, §3-7-109.

Disposition of funds, §3-7-108.

Identification of liquors shipped into
 state, §3-7-112.

No duplicate tax intended, §3-7-101.

Penalty for violations, §3-7-103.

Permit to transport must accompany
 shipment, §3-7-106.

Recovery of tax wrongfully collected,
 §3-7-110.

Rules and regulations, §3-7-107.

Wholesale dealers and distributors.

Failure to obtain liquors from
 approved sources, §3-7-114.

Payment of tax.

Generally, §3-7-301.

Wrongful collections.

Refunds of wrongful collections,
 §3-4-503.

Title of act, §3-1-101.

Toilet preparations.

Exempted products, §3-1-103.

ALCOHOLIC BEVERAGES —Cont'd**Transcripts.**

Proceedings before director of alcoholic
 beverage control division.

Transcript fees, §3-2-217.

**Transfer of permits from location to
 location, §3-4-221.**

Transportation.

Beer, §3-5-217.

Duplicate bills of lading, §3-5-218.

Identification of liquors shipped into
 state, §3-7-112.

Illicitly distilled beverages, §3-3-402.

Seizure and forfeiture of vehicles,
 §3-3-403.

Local option elections.

1935 act proceedings.

C.O.D. shipments, §3-8-315.

Permits, §3-7-106.

United States.

Licenses.

Sale of liquor or beer on federal
 license without state license,
 §3-3-215.

Military sales.

Taxation.

Payment by wholesalers and
 importers.

Rules and regulations, §3-7-307.

Wine.

Subsidies.

Federal legislation obviating
 native wine tax.

Program to be established in
 event of, §3-5-1003.

Implementation of subchapter
 dependent on federal
 legislation, §3-5-1002.

Vegetables.

Wine.

Importation of fruit and vegetables
 for use in local wine subject to
 tax, §3-5-605.

Venue.

Wholesalers' protection from arbitrary
 actions of suppliers.

Civil action for violations, §3-5-1106.

Vinegar.

Exempted products, §3-1-103.

Vinous.

Defined, §3-1-102.

Vinous beverages.

Distribution.

Registration of brands and labels,
 §3-2-403.

Exempted products, §3-1-103.

Violations.

Fines.

Multiple offenses, §3-4-402.

ALCOHOLIC BEVERAGES —Cont'd

Waiver.

- Wholesalers' protection from arbitrary actions of suppliers.
- Waiver of rights prohibited, §3-5-1105.

Warehouses.

- Beer and light wine, §3-5-216.

Warning notices.

- Prohibited acts and practices regarding minors.
- Posting of notice, §3-3-202.

Wholesale dealers and distributors.

- Beer, §§3-5-101, 3-5-202.

Distribution.

- Acquisition of right to sell, ship or distribute a label, §3-2-408.

Applicability of subchapter.

- Incorporation of subchapter into division approvals, §3-2-411.

Beer.

- Submission of label to division, §3-2-409.

- Dual distributorship prohibited, §3-2-412.

Inapplicability of subchapter.

- Arkansas native wine, §3-2-411.

Label submission requirements.

- Beer, malt products or light wine, §3-2-409.

- Registration of brands and labels.
- Spirituuous and vinous beverages, §3-2-403.

Light wine.

- Submission of label to division, §3-2-409.

Malt products.

- Submission of label to division, §3-2-409.

- Prohibition of dual distributorships, §3-2-412.

Request to change wholesalers.

- Appeal, §3-2-406.
- Automatic approval, §3-2-407.
- Contents of application, §3-2-404.
- Disposition of proceedings, §3-2-405.

No objection filed.

- Automatic approval, §3-2-407.
- Notice and hearing, §§3-2-405, 3-2-406.
- Time, §3-2-406.

Obligations, §3-2-405.

Presentation of findings, §3-2-406.

Spirituuous and vinous beverages.

- Acquisition of right to sell, ship or distribute a label, §3-2-408.

ALCOHOLIC BEVERAGES —Cont'd

Wholesale dealers and distributors —Cont'd

Distribution —Cont'd

Spirituuous and vinous beverages

—Cont'd

- Designation of licensed wholesaler, §3-2-403.

- Registration of brands and labels, §3-2-403.

Successors.

Agreements with wholesalers.

- Terms and conditions binding on successor, §3-2-410.

- Waiver of chapter requirements, §3-2-411.

Wholesaler agreements.

- Terms and conditions binding on successor, §3-2-410.

- Dual distributorship prohibited, §3-2-412.

- Failure to obtain spirituuous liquors from approved sources.

- Tax on alcoholic liquors, §3-7-114.

Local option elections.

1935 act proceedings.

- Wholesale of intoxicating liquor in prohibited territory, §3-8-317.

- Effect of dry vote, §3-8-103.

Records of wholesalers of spirituuous liquors.

- Tax on alcoholic liquors, §3-7-113.

- Storing, transporting and selling at wholesale.

- Fee for privilege, §3-4-605.

Taxation.

- Failure to obtain liquors from approved sources, §3-7-114.

Payment of tax.

- Generally, §3-7-301.

- Wholesalers' protection from arbitrary actions of suppliers, §§3-5-1101 to 3-5-1111.

Wholesalers' protection from arbitrary actions of suppliers.

- Beer and light wines, §§3-5-1101 to 3-5-1111.

Actions.

- Civil action for violations, §3-5-1106.

- Applicability of subchapter to future agreements, §3-5-1103.

- Transferee continues under agreement, §3-5-1103.

Arbitration.

- Prohibited acts by supplier.

- Compensation upon supplier's violation, §3-5-1108.

ALCOHOLIC BEVERAGES —Cont'd
Wholesalers' protection from
arbitrary actions of suppliers
 —Cont'd

Beer and light wines —Cont'd
 Attorney's fees.

Civil action for violations,
 §3-5-1106.

Contracts.

Applicability of subchapter to
 future agreements, §3-5-1103.

Conditions for modification of
 agreement, §3-5-1111.

Good faith requirements,
 §3-5-1111.

Notice requirements, §3-5-1111.

Waiver of rights.

Prohibited, §3-5-1105.

Cumulative nature of subchapter,
 §3-5-1104.

Damages.

Civil action for violations,
 §3-5-1106.

Definitions, §3-5-1102.

Injunctive relief.

Violations of subchapter,
 §3-5-1106.

Legislative intent, §3-5-1101.

Prohibited acts by supplier,
 §3-5-1107.

Compensation upon supplier's
 violation, §3-5-1108.

Prohibited acts by wholesaler,
 §3-5-1109.

Purpose of subchapter.

Legislative intent, §3-5-1101.

Transfer of wholesaler's business,
 §3-5-1110.

Interference prohibited, §3-5-1110.

Venue.

Civil action for violations,
 §3-5-1106.

Violations of subchapter.

Civil action for damages,
 §3-5-1106.

Waiver of rights.

Prohibited, §3-5-1105.

Wholesale support center permits.

Application for permit, §3-5-1306.

Authorized transactions, §3-5-1304.

Examination of permittee, §3-5-1309.

Issuance criteria, §3-5-1302.

Primary American source of supply,
 §3-5-1308.

Prohibited actions, §3-5-1305.

Wholesale support center, defined,
 §3-5-1302.

ALCOHOLIC BEVERAGES —Cont'd
Wine.

Additional administrative personnel.
 Light wine.

Employment for enforcement of
 subchapter, §3-5-225.

Applications.

Incentive grants, §3-5-905.

Subsidies, §3-5-1005.

Blending imported wines with local
 wines.

Subject to tax, §3-5-606.

Bottling of local wines.

Sizes convenient for interstate or
 intrastate sale, §3-5-603.

Regulations established by
 director, §3-5-602.

Charitable auction.

Authorized location for conducting
 auction, §3-5-1502.

Commission or promotional fee,
 prohibition, §3-5-1505.

Consumption on premises,
 prohibition, §3-5-1505.

Disposition of proceeds, §3-5-1503.

Donation or purchase.

Obtaining wine to be auctioned,
 §3-5-1504.

Gross receipts act.

Gross receipts not subject to,
 §3-5-1506.

Number within calendar year,
 restriction, §3-5-1505.

Prohibited activities, §3-5-1505.

Rules, §3-5-1507.

Temporary permit, §3-5-1501.

Duration, fee, §3-5-1506.

Complimentary bottle of wine.

Cabins and cottages, §3-5-106.

Definitions.

Light wine, §3-5-202.

On-premises consumption, §3-9-301.

Disaster relief.

Acquisition of ingredients from
 outside state, §3-5-803.

Citation of subchapter, §3-5-801.

Construction of act with existing
 laws, §3-5-804.

Declaration of relief program,
 §3-5-805.

Order of director, §3-5-805.

Expanding operations during period
 of program, §3-5-806.

Ingredients.

Acquisition of ingredients from
 outside state, §3-5-803.

Intent of legislature, §3-5-802.

ALCOHOLIC BEVERAGES —Cont'd**Wine —Cont'd**

Disaster relief —Cont'd

Legislative purpose and intent,
§3-5-802.

Production of wine under relief
program subject to tax,
§3-5-807.

Short title, §3-5-801.

Studies of curtailment of production,
§3-5-805.

Title of subchapter, §3-5-801.

Duties.

Generally, §3-5-703.

Exempted products, §3-1-103.

Fines.

Light wine.

Miscellaneous prohibited
practices, §3-5-221.

Miscellaneous prohibited practices,
§3-5-221.

Free trade among small wineries,
§§3-5-1601 to 3-5-1609.

Bond of winery, §3-5-1608.

Days on which sales may be made,
§3-5-1607.

Definition of small farm winery,
§3-5-1601.

Licensing.

Existing native winery licenses,
§3-5-1604.

Fees, §3-5-1605.

Restaurant wine license,
§3-5-1603.

Retail malt beverage license,
§3-5-1603.

Small farm wineries, §3-5-1602.

Rules, §3-5-1606.

Violation of provisions, §3-5-1609.

Fruit flavors imported for use in local
wines, §§3-5-604, 3-5-605.

Funds.

Incentive grants.

Agricultural marketing grants
fund.

Establishment and use,
§3-5-908.

Light wine.

Disposition of funds, §3-5-224.

Subsidies, §3-5-1007.

Grants.

Incentive grants, §§3-5-901 to
3-5-908.

Herb flavors for production of native
wine, §§3-5-604, 3-5-605.

Importing natural fruit and herb
flavors for production of wine,
§§3-5-604, 3-5-605.

ALCOHOLIC BEVERAGES —Cont'd**Wine —Cont'd**

Incentive grants, §§3-5-901 to 3-5-908.

Interstate or intrastate sale.

Bottling of local wines in convenient
sizes, §§3-5-602, 3-5-603.

Labels and labeling.

Sacramental wine, §3-7-115.

Licenses.

Additional license to sell native
wines not required, §3-5-102.

Restaurant license.

Definition of "license," §3-9-301.

Qualifications of applicants for
license, §3-9-305.

Restrictions on licenses, §3-9-303.

Revocation or suspension of
license, §3-9-307.

Small farm wineries, §3-5-1603.

Small farm wineries, §3-5-1602.

Fees, §3-5-1605.

Restaurant license, §3-5-1603.

Retail malt beverage license,
§3-5-1603.

Light wine.

Additional administrative personnel.

Employment for enforcement of
subchapter, §3-5-225.

Consumer.

Defined, §3-5-202.

Distribution.

Label submission to division,
§3-2-409.

Distributor.

Defined, §3-5-202.

Fines.

Miscellaneous prohibited
practices, §3-5-221.

Funds.

Disposition, §3-5-224.

Intoxicating liquor.

Defined, §3-5-202.

Legislative declaration.

Purpose of subchapter, §3-5-201.

Local option elections, §3-8-401.

Manufacture.

Tax on manufacture.

Rate of tax, §3-7-104.

Miscellaneous prohibited practices,
§3-5-221.

Misdemeanors.

Miscellaneous prohibited
practices, §3-5-221.

Retailers.

Nudity on premises, §3-5-222.

Sale or manufacture without state
permit, §3-5-210.

ALCOHOLIC BEVERAGES —Cont'd**Wine —Cont'd**

Light wine —Cont'd

Municipal corporations.

Permits.

Generally, §3-5-211.

Retailers.

Permits, §3-5-212.

Regulation, §3-5-213.

Penalties, §3-5-203.

Miscellaneous prohibited practices, §3-5-221.

Retailers.

Nudity on premises, §3-5-222.

Sale or manufacture without state permit, §3-5-210.

Transportation.

Noncompliance with requirements respecting duplicate bills of lading, §3-5-218.

Permits.

Dancing privileges.

Inspection fee, §3-5-209.

Duration of state permits, §3-5-208.

Fees.

Dancing privileges, §3-5-209.

Retailers' permits, §3-5-212.

State permits, §§3-5-205, 3-5-208.

Transfer of permit, §3-5-209.

Issuance of state permit, §3-5-206.

Local permits.

Required, §3-5-211.

Retailers' permits, §3-5-212.

Misdemeanors.

Sell or manufacture without state permit, §3-5-210.

Oath by applicant, §3-5-214.

Retailers.

Local permits, §3-5-212.

Qualifications, §3-5-215.

Scope of state permit, §3-5-207.

Transfer of permits, §3-5-209.

Person, §3-5-202.

Privilege tax, §§3-5-205, 3-5-208.

Privilege to manufacture, sell, etc., §3-5-204.

Purpose of subchapter, §3-5-201.

Records, §3-5-219.

Reports, §3-5-219.

Retail dealers.

Defined, §3-5-202.

Nudity on premises.

Penalties, §3-5-222.

Permits, §§3-5-211, 3-5-212.

ALCOHOLIC BEVERAGES —Cont'd**Wine —Cont'd**

Light wine —Cont'd

Retail dealers —Cont'd

Qualifications of retail permittees, §3-5-215.

Regulation, §3-5-213.

Rules and regulations.

Defined, §3-5-202.

Nudity on premises, §3-5-222.

Retailers.

Regulation by municipal corporations, §3-5-213.

Sales.

Tax on sales.

Additional taxes, §3-7-111.

Rate of tax, §3-7-104.

Storage, §3-5-216.

Taxation.

Actions to recover taxes, §3-5-223.

Additional taxes, §3-7-111.

Manufacture of light wine.

Rate of tax, §3-7-104.

Privilege tax, §3-5-205.

Time for payment, §3-5-208.

Sale of light wine.

Rate of tax, §3-7-104.

Transportation, §3-5-217.

Bills of lading.

Duplicate bills, §3-5-218.

Warehouse.

Defined, §3-5-202.

Wholesale dealer and distributor.

Defined, §3-5-202.

Wholesalers' protection from

arbitrary actions of suppliers, §§3-5-1101 to 3-5-1111.

Winery.

Defined, §3-5-202.

Manufacture.

Legislative determinations and intent, §3-5-601.

Misdemeanors.

Light wine.

Miscellaneous prohibited practices, §3-5-221.

Sale or manufacture without state permit, §3-5-210.

Municipal corporations.

Light wine.

Permits.

Generally, §3-5-211.

Retailers.

Permits, §3-5-212.

Regulation, §3-5-213.

Natural fruit flavors for production of native wine, §3-5-604.

ALCOHOLIC BEVERAGES —Cont'd**Wine —Cont'd**

On-premises consumption.

Restaurant or cafe, §§3-9-301 to 3-9-307.

Sunday sales.

Permits, §3-9-411.

Penalties.

Cafe or restaurant licensed to sell wines.

Violations of provisions, §3-9-302.

Light wine, §3-5-203.

Miscellaneous prohibited practices, §3-5-221.

Retailers.

Nudity on premises, §3-5-222.

Sale or manufacture without state permit, §3-5-210.

Transportation.

Noncompliance with requirements respecting duplicate bills of lading, §3-5-218.

Retailers.

Nudity on premises, §3-5-222.

Permits.

Charitable auction permit.

Temporary permit, §3-5-1501.

Duration, fee, §3-5-1506.

Exemption from provisions of act, §3-4-101.

Light wine.

Dancing privileges.

Inspection fee, §3-5-209.

Duration of state permits, §3-5-208.

Fees.

Dancing privileges, §3-5-209.

Retailers' permits, §3-5-212.

State permits, §§3-5-205, 3-5-208.

Transfer of permit, §3-5-209.

Issuance of state permit, §3-5-206.

Local permits.

Required, §3-5-211.

Retailers' permits, §3-5-212.

Misdemeanors.

Sale or manufacture without state permit, §3-5-210.

Oath by applicant, §3-5-214.

Retailers.

Local permits, §3-5-212.

Qualifications, §3-5-215.

Scope of state permit, §3-5-207.

Transfer of permits, §3-5-209.

ALCOHOLIC BEVERAGES —Cont'd**Wine —Cont'd**

Permits —Cont'd

Sampling permit, §3-5-104.

Prohibited acts and practices.

Disaster relief.

Expanding operations during period of program, §3-5-806.

Light wines.

Enumeration of miscellaneous prohibited practices, §3-5-221.

Records.

Incentive grants, §3-5-906.

Light wine, §3-5-219.

Subsidies, §3-5-1006.

Reports.

Light wine, §3-5-219.

Restaurant or cafe.

Application for license, §3-9-305.

Qualifications, §3-9-305.

Cities over 30,000.

Restrictions on license, §3-9-303.

Cities over 55,000 but under 60,000.

Sale by restaurant located near certain cities, §3-9-304.

Cities over 75,000.

Restrictions on license, §3-9-303.

Definitions, §3-9-301.

Director.

Defined, §3-9-301.

Penalty for violation of provisions, §3-9-302.

Person.

Defined, §3-9-301.

Prohibited acts, §3-9-306.

Revocation or suspension of license.

Proceedings for revocation or suspension, §3-9-307.

Violations of provisions.

Penalty for violation, §3-9-302.

"Wine" or "wines."

Defined, §3-9-301.

Retail dealers, §3-5-213.

Qualifications of retail permittees, §3-5-215.

Taxation, §3-4-202.

Rules and regulations.

Bottling of local wines in sizes convenient for sale, §3-5-602.

Incentive grants.

Authority to establish rules and regulations, §3-5-903.

Retailers.

Nudity on premises, §3-5-222.

Regulation by municipal corporations, §3-5-213.

ALCOHOLIC BEVERAGES —Cont'd**Wine —Cont'd**

Sacramental wine, §3-7-115.

Sales.

Bottling of local wines in sizes convenient for interstate or intrastate sale, §3-5-603.

Regulations established by director, §3-5-602.

Legislative determinations and intent, §3-5-601.

Storage.

White wine, §3-5-216.

Subsidies.

Applications, §3-5-1005.

Eligibility, §3-5-1004.

Fund.

Wine grape, berry, fruit and vegetable subsidy fund, §3-5-1007.

Intent of legislature, §3-5-1001.

Legislative determinations and intent, §3-5-1001.

Payments, §3-5-1004.

Amount, §3-5-1004.

Records, §3-5-1006.

United States.

Federal legislation obviating native wine tax.

Program to be established in event of, §3-5-1003.

Implementation of subchapter dependent on federal legislation, §3-5-1002.

Wine grape, berry, fruit and vegetable subsidy fund, §3-5-1007.

Sunday beer and wine permits, §§3-9-501 to 3-9-507.

Tasting events, §3-5-104.

Taxation, §3-7-506.

Blending imported wines with local wines subject to tax, §3-5-606.

Disaster relief.

Production of wine under relief program subject to tax, §3-5-807.

Enforcement.

Joint enforcement, §3-7-505.

Fruits and vegetables imported for use in local wines subject to tax, §3-5-605.

Joint enforcement, §3-7-505.

Light wine.

Actions to recover taxes, §3-5-223.

Privilege tax, §3-5-205.

Time for payment, §3-5-208.

ALCOHOLIC BEVERAGES —Cont'd**Wine —Cont'd****Taxation —Cont'd**

Payment of tax, §3-7-502.

Penalty for failure to timely pay, §3-7-504.

Penalties.

Noncompliance with subchapter, §3-7-504.

Reports, §3-7-502.

Native wines generally, §3-7-506.

Penalty for failure to timely file report, §3-7-504.

Rules and regulations.

Generally, §3-7-501.

Sacramental wine.

Exemption from taxes levied on wine, §3-7-115.

Transportation.

Light wine, §3-5-217.

Bills of lading.

Duplicate bills, §3-5-218.

Vegetables imported for use in local wines subject to tax, §3-5-605.

Wine producers council.

Appointment, §3-5-701.

Composition, §3-5-701.

Creation, §3-5-701.

Officers, §3-5-702.

Powers and duties.

Generally, §3-5-703.

Terms of office, §3-5-701.

Wine and beer on-premises licenses,

§§3-9-601 to 3-9-606.

Annual renewal, §3-9-602.

Corporate applicants, §3-9-603.

Definitions, §3-9-601.

Disciplinary action against licensee, §3-9-606.

Issuance, §3-9-603.

Prohibited acts, §§3-9-604, 3-9-605.

Qualifications of applicants, §3-9-603.

Unlicensed sales, §§3-9-602, 3-9-605.

Wineries.

Defined, §3-5-202.

Incentive grants.

Agricultural marketing grants fund.

Establishment and use, §3-5-908.

Applications, §3-5-905.

Eligibility, §3-5-904.

Establishment of program, §3-5-901.

Fund.

Agricultural marketing grants fund.

Establishment and use, §3-5-908.

Legislative declaration.

Purpose of incentives, §3-5-902.

ALCOHOLIC BEVERAGES —Cont'd**Wineries —Cont'd**

Incentive grants —Cont'd

Payments, §3-5-907.

Amount, §3-5-907.

Program established, §3-5-901.

Purpose of incentives, §3-5-902.

Qualified wineries, §3-5-904.

Records, §3-5-906.

Rules and regulations.

Authority to establish, §3-5-903.

Witnesses.

Board of alcoholic beverage control.

Conducting or hearing appeals,
§3-2-215.

ANNEXATION.**Alcoholic beverages.**

Annexation of dry township into wet
city or town.

Local option election, §§3-8-501,
3-8-502.

APPEALS.**Alcoholic beverages.**

Beer.

Retailers.

Licenses, §3-5-306.

Board of alcoholic beverage control.

Conduct of appeal before board,
§3-2-215.

Licenses.

Denial, suspension or revocation.

Appeal or review by board,
§§3-2-213, 3-2-214.

Director of alcoholic beverage control
division.

Orders suspending, revoking or
refusing license sent by
registered mail, §3-2-212.

Licenses.

Denial, suspension or revocation,
§3-2-216.

Board of alcoholic beverage
control.

Appeal to board, §3-2-213.

Review by board on own motion,
§3-2-214.

Local option elections.

1935 act proceedings.

Contests of elections, §3-8-309.

Initiated act proceedings.

Calling of election, §3-8-205.

Permit applications, §3-4-213.

Wholesale dealers and distributors.

Request to change wholesalers,
§3-2-406.

ARBITRATION.**Alcoholic beverages.**

Wholesalers' protection from arbitrary
actions of suppliers.

Prohibited acts of supplier.

Compensation upon supplier's
violation, §3-5-1108.

ATTORNEYS' FEES.**Alcoholic beverages.**

Wholesalers' protection from arbitrary
actions of suppliers.

Civil action for violations, §3-5-1106.

AUCTIONS AND AUCTIONEERS.**Alcoholic beverages.**

Wine.

Charitable auctions, §§3-5-1501 to
3-5-1507.

Charitable auctions.

Wine, §§3-5-1501 to 3-5-1507.

Wine.

Charitable auctions, §§3-5-1501 to
3-5-1507.

B**BONDS, SURETY.****Alcoholic beverages.**

Free trade among small wineries.

Bond of winery, §3-5-1608.

Local option elections.

1935 act proceedings.

Multiple violations, §3-8-314.

Multiple offenses.

Bonds for good behavior, §3-3-103.

BOOTLEGGING.**Alcoholic beverages.**

Illicit manufacture and equipment,
§§3-3-401 to 3-3-405.

BRANDY.

Alcoholic beverages, §§3-6-101 to
3-6-106.

BRIBERY.**Alcoholic beverages.**

Board of alcoholic beverage control.

Solicitation or acceptance of bribe
prohibited, §3-2-208.

Division of alcoholic beverage control.

Solicitation or acceptance of bribe
prohibited, §3-2-208.

Enforcement division of alcoholic
beverage control.

Solicitation or acceptance of bribe
prohibited, §3-2-208.

BURDEN OF PROOF.**Alcoholic beverages.**

Privilege license holders.

Violations, §3-3-218.

Registration of still or apparatus,
§3-3-401.

C**CHARITABLE ORGANIZATIONS.****Native breweries providing
beverages, §3-5-1405.****CHARITIES.****Alcoholic beverages.**

Permitted premises.

Gambling devices, gaming devices or
slot machines kept on.

Restrictions, §3-9-236.

Wine.

Charitable auctions, §§3-5-1501 to
3-5-1507.

**Gambling devices, gaming devices
or slot machines kept on.**

Alcoholic beverage permitted premises,
§3-9-236.

Wine.

Charitable auctions, §§3-5-1501 to
3-5-1507.

CHRISTMAS DAY.**Alcoholic beverages.**

Sale of intoxicating liquor on

Christmas prohibited, §3-3-211.

CHURCHES.**Alcoholic beverages.**

Retail liquor business.

Operation of business within certain
distance of church.

Prohibited, §3-4-206.

Wine.

Sacramental wine, §3-7-115.

CIDER.**Alcoholic beverages.**

Exempted, §3-1-103.

CIRCUIT COURTS.**Alcoholic beverages.**

Enforcement of liquor laws.

Impeachment of circuit judge,
§3-2-302.

Responsibility of circuit judge,
§3-2-301.

Impeachment.

Alcoholic beverages.

Enforcement of liquor laws,
§3-2-302.

**CIRCUIT COURTS —Cont'd
Judges.**

Alcoholic beverages.

Enforcement of liquor laws.

Impeachment of circuit judge,
§3-2-302.

Responsibility of circuit judge,
§3-2-301.

CLUBS.**Alcoholic beverages.**

Private clubs, §§3-9-221 to 3-9-229.

CONCERTS.

Beer festival permits, §3-5-105.

**CONFIDENTIALITY OF
INFORMATION.****Alcoholic beverages.**

Nonresident beer sellers,
investigations, §3-5-1309.

Private clubs, names of members,
§3-9-232.

CONFLICT OF LAWS.**Alcoholic beverages.**

Microbrewery-restaurants.

Effect on other laws, §3-5-1203.

CONFLICTS OF INTEREST.**Alcoholic beverages.**

Director of department of finance and
administration, §3-2-101.

CONTRACTS.**Alcoholic beverages.**

Manufacturer-seller relationships.

Prohibited acts and practices.

Exclusivity agreements, §3-3-213.

Taxation.

Payment by wholesalers and
importers.

Right to contract, §3-7-306.

Wholesale dealers and distributors.

Terms and conditions binding on
successor, §3-2-410.

Wholesalers' protection from arbitrary
actions of suppliers.

Applicability of subchapter to future
agreements, §3-5-1103.

Conditions for modifications of
agreements, §3-5-1111.

CORPORATIONS.**Alcoholic beverages.**

Permits.

Proceedings on dissolution of
permittee firms, §3-4-103.

COUNTIES.**Alcoholic beverages.**

Licenses and taxes, §3-4-202.

COUNTIES —Cont'd**Alcoholic beverages —Cont'd**

On-premises consumption, §3-9-202.

Supplemental tax or fee levied by city, incorporated town or county, §3-9-214.

Permits.

Beer and light wine.

Required for sale, distribution, and manufacture, §3-5-211.

Retailers' permits, §3-5-212.

Police power of local governments.

On-premises consumption of alcohol.

Rules and regulations, §3-9-205.

Taxation, §3-4-202.

Person.

Defined, §3-7-102.

Licenses.

Alcoholic beverages, §3-4-202.

Taxation.

Alcoholic beverages, §3-4-202.

CRIMINAL HISTORY**INFORMATION AND BACKGROUND.****Alcoholic beverage permit applicants, §3-2-103.****CRIMINAL LAW AND PROCEDURE.****Alcoholic beverages, §3-3-102.**

Beer and light wine, §§3-5-203, 3-5-221.

County and municipal retailers' permits, §3-5-212.

Nudity on premises, §3-5-222.

Sale and manufacture without state permit, §3-5-210.

Christmas day, §3-3-211.

Denatured alcohol sales, §3-3-214.

Dry territories, §3-3-302.

Failure to surrender confiscated beverages, §3-3-315.

Solicitation or taking orders, §3-3-310.

Excise taxes, §§3-7-103, 3-7-111.

Additional taxes, §3-7-111.

Wholesalers and importers, §3-7-303.

Federal license obtained without state license, §3-3-215.

Furnishing to alcoholics or intoxicated persons, §3-3-209.

Handling by minor, §3-3-204.

Kegs of beer or malt beverages.

Identification tags or labels.

Failure to attach for off-premises consumption, §3-5-227.

CRIMINAL LAW AND PROCEDURE

—Cont'd

Alcoholic beverages —Cont'd

Knowingly furnishing or selling to minor, §3-3-202.

Local option, §3-8-310.

Microbreweries, §3-5-1207.

On-premises consumption, §§3-9-204, 3-9-236.

Permits.

Sale of alcoholic beverages without permit, §3-9-209.

Sundays, §3-9-403.

Wine, §3-9-302.

Permits.

Authorization to impose fines, §3-4-401.

Beer and light wine, §3-5-212.

Sale or manufacture without state permit, §3-5-210.

City and county licenses and taxes, §3-4-202.

Issuance, §3-4-204.

On-premises consumption, §3-9-236.

Possession or procuring orders, §3-3-208.

Procuring liquor for another, §3-3-309.

Purchase or possession by minor, §3-3-203.

Sale, barter or possession for sale or barter in dry area, §3-8-312.

Sale in dry territory, §3-8-209.

Sale or delivery to retailer without tax receipt, §3-3-206.

Sale or possession without license, §3-3-205.

Sunday or early weekday morning sales, §3-3-210.

Unknowingly furnishing or selling to minor, §3-3-201.

Untaxed liquor, §3-3-216.

Wine and beer on-premises licenses.

Regulatory violations, §3-9-605.

Classes of violations and fines, §3-4-402.**Drunkenness.**

Public intoxication.

Wine tasting events, §3-5-104.

Intoxication.

Public intoxication.

Wine tasting events, §3-5-104.

Native breweries.

Unlicensed operation, §3-5-1411.

Public intoxication.

Wine tasting events, §3-5-104.

D**DAMAGES.****Alcoholic beverages.**

Wholesalers' protection from arbitrary actions of suppliers.

Civil action for violations, §3-5-1106.

DECEIT.**Alcoholic beverages.**

Beer.

Retailers.

Licenses.

Applications, §3-5-303.

DEFINED TERMS.**Agreement.**

Beer, wholesalers and suppliers, §3-5-1102.

Alcoholic beverages.

Caterer's off-premise permits, §3-4-901.

On-premises consumption, §3-9-202.

Sunday sales, §3-9-402.

Ancillary business.

Beer, wholesalers and suppliers, §3-5-1102.

Barrel.

Alcohol excise taxes, §3-7-116.

Microbreweries-restaurants, §3-5-1202.

Native breweries, §3-5-1403.

Bed and breakfast private club.

On-premises consumption, §3-9-202.

Beer, §3-5-202.

Alcohol excise taxes, §3-7-116.

Microbreweries-restaurants, §3-5-1202.

Native breweries, §3-5-1403.

Nonresident beer sellers, §§3-5-202, 3-5-1302.

Registration of kegs for off premises consumption, §3-5-227.

Sunday beer and wine permit, §3-9-501.

Beer and malt beverage law or regulation.

Microbreweries-restaurants, §3-5-1202.

Beer, wholesalers and suppliers, §3-5-1102.**Block.**

Alcoholic beverages, §3-1-102.

Brand.

Alcoholic beverage distribution, §3-2-412.

Brewer.

Nonresident beer sellers, §§3-5-202, 3-5-1302.

Brewery.

Beer and light wine, §3-5-202.

Native breweries, §3-5-1403.

DEFINED TERMS —Cont'd**Cabins and cottages.**

Alcoholic beverages, §3-5-106.

Cafe.

Wines, §3-9-301.

Caterer's off-premises permits.

Alcoholic beverages, §3-4-901.

City.

On-premises alcoholic beverage consumption, §3-9-202.

Conflicting beer or malt beverage law or regulation.

Microbreweries-restaurants, §3-5-1202.

Consumer.

Beer and light wine, §3-5-202.

Contract brewing company.

Native breweries, §3-5-1403.

Designated member.

Beer, wholesalers and suppliers, §3-5-1102.

Dispensary.

Alcoholic beverages, §3-1-102.

Distributor.

Beer and light wine, §3-5-202.

Dry.

Local option election.

Annexation of dry township into wet city or town, §3-8-501.

Dry area.

Microbreweries-restaurants, §3-5-1202.

On-premises beverage consumption, §3-9-202.

Excursion boat.

Sunday sales of alcoholic beverages, §3-9-402.

Federal regulations.

Microbreweries-restaurants, §3-5-1202.

Final determination.

Alcoholic beverage local options, §3-8-102.

Good faith.

Beer, wholesalers and suppliers, §3-5-1102.

Grower.

Beer and light wine, §3-5-205.

Home-brewed.

Beer and light wine, §3-5-202.

Hotel.

On-premises alcoholic beverage consumption, §3-9-202.

Sunday beer and wine permit, §§3-9-402, 3-9-501.

Sunday sales of alcoholic beverages, §3-9-402.

Illicit still, §3-3-401.**Intoxicating liquor.**

Beer and light wine, §3-5-202.

DEFINED TERMS —Cont'd**Intoxicating liquor —Cont'd**

Local option election.

Annexation of dry township into wet city or town, §3-8-501.

Keg.

Registration of beer kegs for off premises consumption, §3-5-227.

Large meeting or attendance facility.

On-premises alcoholic beverage consumption, §3-9-202.

License.

Wine and beer on-premises licenses, §3-9-601.

Wines, §3-9-301.

Light spirituous liquor.

Excise taxes, §3-7-104.

Light wine, §3-5-202.

Excise taxes, §3-7-104.

Malt.

Alcoholic beverages, §3-1-102.

Malt beverage.

Alcohol excise taxes, §3-7-116.

Microbreweries-restaurants, §3-5-1202.

Native breweries, §3-5-1403.

Registration of kegs for off premises consumption, §3-5-227.

Malt liquor.

Nonresident beer sellers, §§3-1-102, 3-5-1302.

Manufacturer.

Alcoholic beverage exclusivity agreements, §3-3-213.

Alcoholic beverages, §3-1-102.

Nonresident beer sellers, §§3-1-102, 3-5-1302.

Microbrewery-restaurant.

Native breweries, §3-5-1403.

Native brewer.

Native breweries, §3-5-1403.

Native brewery, §3-5-1403.**Off-premise caterer.**

Caterer's off-premises permits, §3-4-901.

Off-premises.

Registration of beer kegs for off-premises consumption, §3-5-227.

On-premises beverage consumption.

Alcoholic beverages, §3-9-202.

On-premises consumption.

Sunday sales of alcoholic beverages, §3-9-402.

Permittee.

Alcoholic beverages, §3-4-802.

Person.

Alcoholic beverage excise taxes, §3-7-102.

DEFINED TERMS —Cont'd**Person —Cont'd**

Alcoholic beverage exclusivity agreements, §3-3-213.

Alcoholic beverages, §3-1-102.

Beer and light wine, §3-5-202.

Dry territories, §3-3-301.

Microbreweries-restaurants, §3-5-1202.

Native breweries, §3-5-1403.

On-premises alcoholic beverage consumption, §3-9-202.

On-premises consumption, §3-9-202.

Sunday sales of alcoholic beverages, §3-9-402.

Wine and beer on-premises licenses, §3-9-601.

Wines, §3-9-301.

Premixed spirituous liquor.

Excise taxes, §3-7-104.

Primary American source of supply.

Nonresident beer sellers, §3-5-1308.

Private club.

On-premises alcoholic beverage consumption, §3-9-202.

Sunday sales of alcoholic beverages, §3-9-402.

Producer brewery.

Native breweries, §3-5-1403.

Proper regulation.

Beer and light wine, §3-5-202.

Qualified manufacturer.

Alcohol excise taxes, §3-7-116.

Reasonable qualifications.

Beer, wholesalers and suppliers, §3-5-1102.

Referendum election.

On-premises alcoholic beverage consumption, §3-9-202.

On-premises consumption, §3-9-202.

Regulation.

Beer and light wine, §3-5-202.

Restaurant.

Microbreweries-restaurants, §3-5-1202.

Native breweries, §3-5-1403.

On-premises alcoholic beverage consumption, §3-9-202.

Sunday beer and wine permit, §3-9-501.

Sunday sales of alcoholic beverages, §3-9-402.

Wines, §3-9-301.

Retail dealer.

Beer and light wine, §3-5-202.

Retailer's permit.

Alcoholic beverages, §3-4-204.

Retaliatory action.

Beer, wholesalers and suppliers, §3-5-1102.

DEFINED TERMS —Cont'd**Sales territory.**

Beer, wholesalers and suppliers,
§3-5-1102.

Similarly situated wholesalers.

Beer, §3-5-1102.

Small brewery.

Native breweries, §3-5-1403.

Small farm winery.

Free trade among small wineries,
§3-5-1601.

Spirituos.

Alcoholic beverages, §3-1-102.

Spirituos liquor.

Alcoholic beverage excise taxes,
§3-7-104.

Substantial stockholder or substantial partner.

Beer, wholesalers and suppliers,
§3-5-1102.

Supplier.

Beer, §3-5-1102.
Nonresident beer sellers, §§3-5-1102,
3-5-1302.

Transfer of wholesalers' business.

Beer, §3-5-1102.

Vested permits.

Alcoholic beverages, §3-4-205.

Vinous.

Alcoholic beverages, §3-1-102.

Vinous liquor.

Excise taxes, §3-7-104.

Warehouse.

Beer and light wine, §3-5-202.

Wet.

Local option election.
Annexation of dry township into wet
city or town, §3-8-501.

Wholesale dealer and distributor.

Beer and light wine, §3-5-202.

Wholesaler.

Alcohol excise taxes, §3-7-116.
Beer, §3-5-1102.
Nonresident beer sellers, §§3-5-202,
3-5-1302.

Wholesale support center.

Nonresident beer sellers, §3-5-1302.

Wine.

Gross receipts and supplemental taxes
on sales, §3-9-213.
Sunday beer and wine permit,
§3-9-501.
Wine and beer on-premises licenses,
§3-9-601.

Winery.

Light wine, §3-5-202.

DENATURED ALCOHOL.**Alcoholic beverages.**

Prohibited acts and practices,
§3-3-214.

DRUNKENNESS.**Drinking in public.**

Wine tasting events, §3-5-104.

Public intoxication.

Wine tasting events, §3-5-104.

E**EDUCATION.****Alcoholic beverages.**

Retail liquor business.
Operation of business within certain
distance of schoolhouse
prohibited, §3-4-206.

ELECTIONS.**Alcoholic beverages.**

Local option elections, §§3-8-101 to
3-8-401.
Sunday beer and wine permits.
Hotels and restaurants, §3-9-506.

Local option elections.

Alcoholic beverages, §§3-8-101 to
3-8-401.

EMERGENCIES.**Wine.**

Disaster relief, §§3-5-801 to 3-5-807.

EVIDENCE.**Alcoholic beverages.**

Denatured alcohol.
Sale for beverage purposes
prohibited.
Prima facie evidence in sale of
alcohol, §3-3-214.
Federal license.
Sale of liquor or beer on federal
license without state license.
Prima facie evidence of unlawful
possession, §3-3-215.
Illicit manufacture and equipment.
Burden of proof.
Registration of still or apparatus,
§3-3-401.
Reputation of defendant, §3-3-405.
Privilege license holders.
Burden of proof of violations,
§3-3-218.

F**FEES.****Native breweries.**

General fees, §3-5-1408.

FEES —Cont'd**Native breweries —Cont'd**

Wholesalers and retailers, §3-5-1406.

FESTIVALS.

Beer festival permits, §3-5-105.

FIDUCIARIES.**Alcoholic beverages.**

Continuation of permitted business,
§3-4-103.

Sale by fiduciaries, §3-4-104.

**FINANCE AND ADMINISTRATION
DEPARTMENT.****Director.**

Alcoholic beverages.

Beer and light wine.

Employment of additional
administrative personnel to
enforce subchapter, §3-5-225.

Wine.

Consent of grants.

Rules and regulations, §3-5-903.

FINES.**Alcoholic beverages, §3-3-102.**

Beer and light wine, §3-5-221.

County and municipal retailers'
permits, §3-5-212.

Classes of violations and fines,
§3-4-402.

Denatured alcohol sales, §3-3-214.

Dram shop law, §3-3-209.

Dry territories, §§3-8-209, 3-8-312.

Excise taxes, §§3-7-103, 3-7-111.

Additional taxes, §3-7-111.

Federal license obtained without state
license, §3-3-215.

Furnishing to alcoholics or intoxicated
persons, §3-3-209.

Handling by minor, §3-3-204.

Local option, §3-8-310.

Minors.

Handling by, §3-3-204.

Procuring liquor for another,
§3-3-309.

Purchase or possession, §3-3-203.

Sales to, §3-3-201.

Nonresident beer sellers.

Violation of provisions, §3-5-1310.

Permits.

Authorization to impose fines,
§3-4-401.

City and county licenses and taxes,
§3-4-202.

County and municipal retailers,
§3-5-212.

Issuance, §3-4-204.

Possession or procuring orders,
§3-3-208.

FINES —Cont'd**Alcoholic beverages —Cont'd**

Procuring liquor for another, §3-3-309.

Purchase or possession by minor,
§3-3-203.

Retail establishments.

Violating local closing hours,
§3-4-407.

Sale, barter or possession for sale or
barter in dry area, §3-8-312.

Sale in dry territory, §3-8-209.

Unknowingly furnishing or selling to
minor, §3-3-201.

Untaxed liquor, possession or sale,
§3-3-216.

FINGERPRINTING.**Alcoholic beverage permit
applicants.**

Submission of fingerprints, §3-2-103.

FIRES AND FIRE PREVENTION.**Alcoholic beverages.**

Beer involved in fire, wreck or
casualty.

Labeling of beer, §3-4-104.

FRAUD.**Alcoholic beverages.**

Beer retailers.

License application, §3-5-303.

Wine and beer on-premises licenses.

Grounds for disciplinary action,
§§3-9-603, 3-9-604.

FRUIT.**Alcoholic beverages.**

Wine.

Importing natural fruit flavors and
herb flavors for production of
native wine, §3-5-604.

Subject to tax, §3-5-605.

FUNDS.**Alcoholic beverages.**

Beer.

Disposition of funds, §3-5-224.

Special retail tax.

Disposition of funds, §3-7-205.

Wine.

Incentive grants.

Agricultural marketing grants
fund.

Establishment and use,
§3-5-908.

Light wine.

Disposition of funds, §3-5-224.

Subsidies.

Wine grape, berry, fruit and
vegetable subsidy fund,
§3-5-1007.

G**GAMBLING.****Alcoholic beverage permitted premises.**

Gambling devices, gaming devices or slot machines kept on.

Prohibition, exception, charitable organizations, §3-9-236.

GRAND JURY.**Alcoholic beverages.**

Local option elections.

1935 act proceedings.

Charge to grand jury.

Act to be given, §3-8-316.

GRANTS.**Alcoholic beverages.**

Wine.

Incentive grants, §§3-5-901 to 3-5-908.

Wine.

Incentive grants, §§3-5-901 to 3-5-908.

GROSS RECEIPTS TAX.**Alcoholic beverages.**

Caterer's off-premises permits, §3-4-904.

H**HEARINGS.****Alcoholic beverages.**

Board of alcoholic beverage control.

Conduct of hearing on appeal before board, §3-2-215.

Permits.

Applications, §3-4-208.

Wholesale dealers and distributors.

Request to change wholesalers, §§3-2-405, 3-2-406.

HOLIDAYS AND MEMORIAL DAYS.**Christmas day.**

Sale of intoxicating liquor on

Christmas prohibited, §3-3-211.

HOTELS, INNS AND OTHER**TRANSIENT LODGING PLACES.****Alcoholic beverages.**

Complimentary bottle of wine.

Cabins and cottages, §3-5-106.

Cabins and cottages.

Complimentary bottle of wine, §3-5-106.

I**IMPEACHMENT.****Circuit courts.**

Alcoholic beverages.

Enforcement of liquor laws, §3-2-302.

IMPORTS.**Alcoholic beverages.**

Methods of identifying liquors shipped into state, §3-7-112.

Permits.

Transport permit must accompany permit, §3-7-106.

Wine.

Importing natural fruit flavors for production, §§3-5-604, 3-5-605.

INDICTMENTS.**Alcoholic beverages.**

Local option elections.

1935 act proceedings, §3-8-313.

INITIATIVE AND REFERENDUM.**Alcoholic beverages.**

Sunday beer and wine permits.

Hotels and restaurants, §3-9-506.

INJUNCTIONS.**Alcoholic beverages.**

Wholesalers' protection from arbitrary actions of suppliers.

Injunctive relief for violations, §3-5-1106.

INSPECTIONS.**Alcoholic beverages.**

On-premises consumption, §3-9-232.

Sunday sales.

Inspection of books and records.

Consent to inspection prerequisite to obtaining permit, §3-9-406.

Records and reports of licensees, §3-2-211.

INSURANCE.**Alcoholic beverages.**

Sale by insurers, §3-4-104.

INTERSTATE COMMERCE.**Alcoholic beverages.**

Wine.

Bottling of local wines.

Sizes convenient for interstate or intrastate sale, §3-5-603.

Regulations established by director, §3-5-602.

INTERSTATE COMMERCE —Cont'd
Wine.

- Bottling of local wines.
- Sizes convenient for interstate or intrastate sale, §3-5-603.
- Regulations established by director, §3-5-602.

INTOXICATING LIQUORS.

- General provisions, §§3-1-101 to 3-9-307.

INVOICES.**Alcoholic beverages.**

- Failure to pay invoices.
- List of permit holders, §3-4-406.

J**JURISDICTION.****Alcoholic beverages.**

- Retail establishments.
- Local closing hour violations, §3-4-407.

L**LABELS.****Alcoholic beverages.**

- Beer.
 - Label submission to division, §3-2-409.
 - Sale in original labeled containers, §3-5-220.
- Distribution.
 - Acquisition of right to sell, ship or distribute a label, §3-2-408.
- Beer, malt products or light wine.
 - Label submission requirements, §3-2-409.
- Spirituous and vinous beverages.
 - Registration of brands and labels, §3-2-403.

Wine.

- Light wine, §3-2-409.
- Sacramental wine, §3-7-115.

Wine.

- Sacramental wine, §3-7-115.

LAW ENFORCEMENT OFFICERS.**Alcoholic beverages.**

- Enforcement of liquor laws, §3-2-209.
- Authority, §3-2-210.

LICENSES.**Municipal corporations.**

- Alcoholic beverages, §3-4-202.

LIENS.**Alcoholic beverages.**

- License fees, §3-4-219.

LIENS —Cont'd**Alcoholic beverages —Cont'd**

- Permit fees, §3-4-219.
- Taxation.
 - Special retail tax.
 - Execution of lien, §3-7-203.
 - Procedure for obtaining lien, §3-7-202.

M**MAIL.****Alcoholic beverages.**

- Director of alcoholic beverage control division.
- Order suspending, revoking or refusing license sent by registered mail, §3-2-212.

MALT BEVERAGES.

- Native breweries, §§3-5-1401 to 3-5-1414.

MANDAMUS.**Alcoholic beverages.**

- Local option elections.
- Initiated act proceedings.
- County officials, §3-8-207.

MEDICINE.**Alcoholic beverages.**

- Medicinal preparations exempted from act, §3-1-103.

MILITARY AFFAIRS.**Alcoholic beverages.**

- Post-exchange package permits, §§3-4-701 to 3-4-706.
- Sales to military.
- Taxation.
 - Payment by wholesalers and importers.
 - Rules and regulations, §3-7-307.

MINORS.**Alcoholic beverages.**

- Beer and light wine, §3-5-221.
- Licensing of retailers, §3-5-307.
- On-premises consumption, §3-9-236.
- Prohibited acts and practices.
 - Handling of alcoholic beverages by minors not allowed, §3-3-204.
 - Penalties for violation, §3-3-204.
- Knowingly furnishing to minor, §3-3-202.
- Posting of warning notices, §3-3-202.
- Sales, §3-3-202.
- Unknowingly furnishing to minor, §3-3-201.
- Purchase or possession by minor unlawful, §3-3-203.

MINORS —Cont'd**Alcoholic beverages —Cont'd**

- Responsible permittee programs.
- Legislative intent and purpose,
§3-4-801.

MOONSHINING.**Alcoholic beverages.**

- Illicit manufacture and equipment,
§§3-3-401 to 3-3-405.

MUNICIPAL CORPORATIONS.**Alcoholic beverages.**

- Beer.
 - Permits generally, §3-5-211.
- Retailers.
 - Permits, §3-5-212.
 - Regulation, §3-5-213.
- Retail sale of beer regulated by
cities and towns, §3-5-213.
- Licenses, §3-4-202.
- On-premises consumption.
 - Supplemental tax or fee levied by
city, incorporated town or
county, §3-9-214.
- Permits.
 - Beer and light wine.
 - Required for sale, distribution and
manufacture, §3-5-211.
 - Retailers' permits, §3-5-212.
- Police power of local governments.
 - On-premises consumption of alcohol.
 - Rules and regulations,
§3-9-205.
- Rules and regulations.
 - Retailers of beer and light wine,
§3-5-213.
- Taxation, §3-4-202.
- Wine.
 - Light wine.
 - Permits generally, §3-5-211.
 - Retailers.
 - Permits, §3-5-212.
 - Regulation, §3-5-213.

Annexation.

- Alcoholic beverages.
 - Annexation of dry township into wet
city or town.
 - Local option election, §§3-8-501,
3-8-502.
 - Local option election.
 - Annexation of dry township into wet
city or town, §§3-8-501, 3-8-502.

Licenses.

- Alcoholic beverages, §3-4-202.

Taxation.

- Alcoholic beverages, §3-4-202.

N**NATIVE BRANDY LAW.****Alcoholic beverages.**

- Brandy.
 - General provisions, §§3-6-101 to
3-6-106.

**NATIVE BREWERIES, §§3-5-1401 to
3-5-1414.****Charitable organizations, providing
beverages for, §3-5-1405.****Conflict of laws, §3-5-1404.****Definitions, §3-5-1403.****Dry areas.**

- Licenses prohibited in, §3-5-1412.

**Educational or promotional tasting
events, §3-5-1409.****Fees generally, §3-5-1408.****Legislative findings, §3-5-1402.****Licenses, §3-5-1405.**

- Additional licenses, §3-5-1406.
- Application, §3-5-1410.
- Dry areas, §3-5-1412.

- Unlicensed operation, §3-5-1411.

Purpose of provisions, §3-5-1402.**Retailers' license fee, §3-5-1406.****Rules promulgation, §3-5-1413.****Sale for on-premises or off-premises
consumption, §3-5-1405.****Shipping in or out of state,
§3-5-1407.****Supplemental nature of provisions,
§3-5-1414.****Tasting events, §3-5-1409.****Taxes, §3-5-1408.****Title of act, §3-5-1401.****Transportation of beverages,
§3-5-1407.****Unlicensed operation, §3-5-1411.****Wholesalers' license fee,
§3-5-1406.****NONRESIDENTS.****Alcoholic beverages.**

- Nonresident beer sellers, §§3-5-1301 to
3-5-1310.

NOTICE.**Alcoholic beverages.**

- Beer.
 - Distribution areas for beer, §3-5-103.
- Retailers.
 - Licenses.
 - Applications, §3-5-304.
 - Local option elections.
 - 1935 act proceedings, §3-8-304.
- Permits.
 - Applications.
 - Requirements as to notice,
§3-4-210.

NOTICE —Cont'd**Alcoholic beverages —Cont'd**

Permits —Cont'd

Revocation of permit, §3-4-303.

Wholesale dealers and distributors.

Request to change wholesalers.

Hearing notice, §§3-2-405, 3-2-406.

Native breweries.

Educational or promotional tasting events, §3-5-1409.

O**OATHS.****Alcoholic beverages.**

Beer.

Permits.

Applicant, §3-5-214.

Board of alcoholic beverage control.

Conducting or hearing appeals,
§3-2-215.

Personnel, §3-2-207.

Division of alcoholic beverage control.

Personnel, §3-2-207.

Enforcement division of alcoholic
beverage control.

Personnel, §3-2-207.

Wine.

Light wine.

Permits.

Applicant, §3-5-214.

OBSCENITY.**Alcoholic beverages.**

Beer retailers.

Nudity on premises.

Prohibited, §3-5-222.

Light wine retailers.

Nudity on premises.

Prohibited, §3-5-222.

Nudity on premises.

Penalty, §§3-5-222, 3-9-101.

Prohibited, §§3-5-222, 3-9-101.

Regulations, §§3-5-222, 3-9-101.

ORDINANCES.**Alcoholic beverages.**

Retail establishments.

Local closing hours, §3-4-407.

P**PARI-MUTUEL WAGERING.****Alcoholic beverages.**

Mixed drink permit, §3-9-238.

PARTNERSHIPS.**Alcoholic beverages.**

Permits.

Proceedings on dissolution of
permittee firms, §3-4-103.**PRISON TERMS.****Alcoholic beverages.**

Hard labor, §3-3-102.

Permits.

Issuance, §3-4-204.

PRIVATE CLUBS.**Alcoholic beverages.**General provisions, §§3-9-221 to
3-9-229.**PRIVILEGE TAXES.****Beer and light wine,** §§3-5-205,
3-5-208.**PROHIBITION.****Alcoholic beverages.**

Prohibited acts and practices.

Dry territories, §§3-3-301 to 3-3-315.

PROSECUTING ATTORNEYS.**Alcoholic beverages.**

Enforcement of liquor laws.

Special prosecutor, §3-2-301.

R**RECORDS.****Alcoholic beverages.**

Beer, §3-5-219.

Distillers and wholesalers of spirituous
liquors.

Tax on alcoholic liquors, §3-7-113.

Division of alcoholic beverage control.

Authentication of records, §3-2-204.

Licensees' records, §3-2-211.

Inspection, §3-2-211.

On-premises consumption.

Inspection of premises and records,
§3-9-232.

Wine.

Incentive grants, §3-5-906.

Light wine, §3-5-219.

Subsidies, §3-5-1006.

RELIGION.**Alcoholic beverages.**

Retail liquor business.

Operation of business within certain
distance of church, §3-4-206.**REPORTS.****Alcoholic beverages.**

Beer, §3-5-219.

REPORTS —Cont'd**Alcoholic beverages —Cont'd**

Licenses' reports, §3-2-211.

Inspection, §3-2-211.

Nonresident beer sellers.

Failure to file prohibited, §3-5-1305.

Wine.

Light wine, §3-5-219.

RESIDENCE.**Alcoholic beverages.**

Brandy.

Application for permit, §3-6-104.

RESTAURANTS.**Alcoholic beverages.**

Wine.

Restaurant or cafe, §§3-9-301 to 3-9-307.

Wine.

Restaurant or cafe, §§3-9-301 to 3-9-307.

RETALIATION.**Beer wholesalers and suppliers.**

Prohibited acts by suppliers,
§3-5-1107.

Retaliatory action defined, §3-5-1102.

S**SEALS AND SEALED
INSTRUMENTS.****Alcoholic beverages.**

Division of alcoholic beverage control,
§3-2-204.

SEARCHES AND SEIZURES.**Alcoholic beverages.**

Authority of enforcement agents,
§3-2-210.

Dry territories.

Prohibited acts and practices.

Authority to seize beverages,
§3-3-311.

Determination of interest in seized
beverages, §3-3-313.

Procedure upon seizure of
beverages, §3-3-312.

Sale of confiscated beverages,
§3-3-314.

Surrender of confiscated
beverages.

Failure to surrender, §3-3-315.

Enforcement of liquor laws.

Destruction of liquor.

Issuance of search warrants,
§3-2-304.

SEARCHES AND SEIZURES —Cont'd**Alcoholic beverages —Cont'd**

Illicit manufacture and equipment.

Seizure and forfeiture of vehicles,
§3-3-403.

Search warrants.

Alcoholic beverages.

Enforcement of liquor laws.

Destruction of liquor,
§3-2-304.

SENTENCING.**Alcoholic beverages.**

Prohibited acts and practices,
§3-3-102.

SHERIFFS.**Alcoholic beverages.**

Enforcement of liquor laws.

Temporary officer to act in place of
sheriff, §3-2-301.

SHOWS.

Beer festival permits, §3-5-105.

SLOT MACHINES.**Alcoholic beverage permitted
premises.**

Gambling devices, gaming devices or
slot machines kept on,
§3-9-236.

SOLICITATION.**Alcoholic beverages.**

Board of alcoholic beverage control.

Acceptance of bribe or solicitation
prohibited, §3-2-208.

Division of alcoholic beverage control.

Acceptance of bribe or solicitation
prohibited, §3-2-208.

Dry territories.

Prohibited acts and practices,
§3-3-310.

Enforcement division of alcoholic
beverage control.

Acceptance of bribe or solicitation
prohibited, §3-2-208.

STATE OF ARKANSAS.**Alcoholic beverages.**

Police power of state.

On-premises consumption.
Rules and regulations,
§3-9-205.

STATE POLICE.**Alcoholic beverages.**

Enforcement of liquor laws.

Powers and duties of state police,
§3-2-303.

STATES.**Alcoholic beverages.**

Wine.

Disaster relief.

Acquisition of ingredients from
outside state, §3-5-803.**STOCK AND STOCKHOLDERS.****Alcoholic beverages.**

Local option.

Time allowed to dispose of stock
after local option election,
§3-8-102.**STORAGE.****Alcoholic beverages, §3-5-216.****SUBPOENAS.****Alcoholic beverages.**

Board of alcoholic beverage control.

Conducting or hearing appeals,
§3-2-215.**SUBSIDIES.****Wines.**General provisions, §§3-5-1001 to
3-5-1007.**SUNDAY.****Alcoholic beverages.**

Exceptions to prohibition, §3-3-210.

Permitted sales, §3-3-210.

Prohibited acts and practices.

Sales on Sunday, §3-3-210.

Retail deliveries on Sunday,
§3-3-210.

Sales on Sunday, §3-3-210.

Sunday beer and wine permit,
§§3-9-501 to 3-9-507.**T****TAXATION.****Alcoholic beverages.**

Private clubs.

Collection of delinquent state and
local taxes, §3-9-229.Special retail tax, §§3-7-201 to
3-7-205.**Native breweries, §3-5-1408.****Refunds.**

Alcoholic beverages.

Wrongful collections of tax, §3-4-503.

TRANSCRIPTS.**Alcoholic beverages.**Proceedings before director of alcoholic
beverage control division.

Transcript fees, §3-2-217.

U**UNITED STATES.****Alcoholic beverages.**

Licenses.

Sale of liquor or beer on federal
license without state license,
§3-3-215.

Military sales.

Taxation.

Payment by wholesalers and
importers.Rules and regulations,
§3-7-307.

Wine.

Subsidies.

Federal legislation obviating
native wine tax.Program to be established in
event of, §3-5-1003.Implementation of subchapter
dependent on federal
legislation, §3-5-1002.**V****VEGETABLES.****Wine.**Importation of fruits and vegetables
for use in local wine, §3-5-605.**VENUE.****Alcoholic beverages.**Wholesalers' protection from arbitrary
actions of suppliers.Civil action for violations,
§3-5-1106.**W****WAIVER.****Alcoholic beverages.**Wholesalers' protection from arbitrary
actions of suppliers.Waiver of rights prohibited,
§3-5-1105.**WAREHOUSES.****Alcoholic beverages.**

Beer.

Warehousing of beer, §3-5-216.

Wine.

Light wines.

Warehousing of light wines,
§3-5-216.**WINE.****General provisions, §§3-5-601 to
3-5-1609.**

WINE —Cont'd**Light wine.**

General provisions, §§3-5-201 to
3-5-226.

WITNESSES.**Alcoholic beverages.**

Board of alcoholic beverage control.

Conducting or hearing appeals,
§3-2-215.

WRECKS.**Alcoholic beverages.**

Beer involved in fire, wreck or
casualty.

Labeling of beer, §3-4-104.

